TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. ~~776.~~ ~~468~~ 190 20

PULLMAN'S PALACE CAR COMPANY, PLAINTIFF IN ERROR,

vs.

THE CENTRAL TRANSPORTATION COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED OCTOBER 16, 1886.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 776.

PULLMAN'S PALACE CAR COMPANY, PLAINTIFF IN ERROR,

vs.

THE CENTRAL TRANSPORTATION COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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1 UNITED STATES, *Eastern District of Pennsylvania,* } *sct:*

The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, Greeting:

Because that in the record and process and also in the rendering of judgment in a suit before you, between The Central Transportation Company, a corporation incorporated and existing under the laws of the State of Pennsylvania and a citizen thereof, plaintiff, and Pullman's Palace Car Company, a corporation incorporated and existing under the laws of the State of Illinois and a citizen thereof, defendant, in a plea of covenant, a manifest error has intervened, to the great damage of the said Pullman's Palace Car Company, as in their complaint has been stated, and, as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that, if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the honorable the justices of the Supreme Court of the United States, sitting at Washington, D. C., on the second Monday of October next, that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this 29th day of June, A. D. one thousand eight hundred and eighty-six, and in the one hundred and tenth year of the Independence of the said United States.

[Seal U. S. Circuit Court, E. D. Pennsylvania.]

SAMUEL BELL,
Clerk of Circuit Court U. S.

2 THE UNITED STATES OF AMERICA, *ss:*

To Central Transportation Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, wherein Pullman's Palace Car Company — plaintiff and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, shall not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness my hand this 17th day of July, in the year of our Lord one thousand eight hundred and eighty-six.

WM. BUTLER, *Judge.*

I hereby accept service of the above citation on behalf of the Central Transportation Company, and request the clerk to enter my appearance for it.

JOHN G. JOHNSON,
Att'y Ce't. T. Co.

3 UNITED STATES OF AMERICA, }
Eastern District of Pennsylvania, } *ss:*

In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit.

CENTRAL TRANSPORTATION COMPANY
vs.
PULLMAN'S PALACE CAR COMPANY.

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of October session, 1885, No. 14.

It is thus contained:

Be it remembered that on the 27th day of October, in the year of our Lord one thousand eight hundred and eighty-five, the de-
4 fendant, The Pullman's Palace Car Company, by its attorney, Samuel Dickson, Esq., comes into court here and files an exemplification of the record in the court of common pleas No. 2 for the county of Philadelphia, State of Pennsylvania, which, being read, is as follows, to wit:

5 *Exemplification.*

STATE OF PENNSYLVANIA, }
Philadelphia County, } *sct:*

Among the records and proceeding- of the court of common pleas No. 2 for the county of Philadelphia, State of Pennsylvania, the following may be found as matter of file and of record at No. 639, June term, 1885, to wit:

June Term, 1885.

CENTRAL TRANSPORTATION COMPANY }
vs. } 639.
PULLMAN'S PALACE CAR COMPANY. }

J. G. Johnson, G. W. Thorn, S. Dickson. Sept. 12, '85.

Docket entries:

Sum's cov't.
Exit July 30, 1885.
Ret. 1 Mon. Aug., 1885. Served.
Oct. 26, 1885.—Petition for removal of cause to circuit court of U. S. filed.
Eo die, bond filed.

5½ C. P. No. 2. June T., 1885.

CENTRAL TRANSPORTATION COMPANY
vs.
PULLMAN'S PALACE CAR COMPANY. } No. —.

Issue summons — covenant, as above, ret'ble 1st Monday of August next.

JOHN G. JOHNSON,
GEORGE W. THORN,
H.,
Atty's for Pl'ff.

To proth'y C. P.

(Endorsed:) 639. June T., 1885. C. P. No. 2. Central Trans. Co. *vs.* Pullman's Palace Car Co. *Præcipe* sum's cov't. Filed July 30, 1885. W. MacCain. John G. Johnson, George W. Thorn, att'ys for pl'ffs.

6 *Summons.*

COUNTY OF PHILADELPHIA, *ss:*

[SEAL.] The Commonwealth of Pennsylvania to the sheriff of Philadelphia county, Greeting:

We command you that you summon Pullman's Palace Car Company, late of your county, so that it be and appear before our judges, at Philadelphia, at our court of common pleas No. 2 for the county of Philadelphia, to be holden at Philadelphia, in and for the said city and county of Philadelphia, the first Monday of August next, there to answer Central Transportation Company of a plea of breach of covenant, etc., and have you then there this writ.

Witness the Honorable J. I. Clark Hare, president of our said court, at Philadelphia, the 30th day of July, in the year of our Lord one thousand eight hundred and eighty-five.

W. MACCAIN,
Pro Prothonotary.

7 [Endorsed:] 9–233. 639. June term, 1885. C. P. No. 2. Central Transportation Company *vs.* Pullman's Palace Car Company. Summons cov't. John G. Johnson. George W. Thorn.

Served the Pullman's Palace Car Company by giving, August 3rd, 1885, a true and attested copy of the within writ to Robert Barry, superintendant of said company, and making known to him the contents thereof.

So answers—

A. ALBRIGHT,
Deputy Sheriff.
GEO. DE B. KEIM, *Sheriff.*

8 C. P. No. 2. June Term, 1885.

CENTRAL TRANSPORTATION COMPANY
vs.
PULLMAN PALACE CAR COMPANY. } No. 639.

Enter my appearance for defendant in above-entitled case.

SAMUEL DICKSON,
For Defendants.

(Endorsed:) 639. June term, 1885. C. P. No. 2. Central Transportation Company *vs.* Pullman Palace Car Company. Appearance. Filed Sep. 12, 1885. P. F. Clay. S. Dickson.

C. P. No. 2. June Term, 1885.

CENTRAL TRANSPORTATION COMPANY
vs.
PULLMAN'S PALACE CAR COMPANY. } No. 639.

9 To the honorable the judges of the court of common pleas No. 2 of Philadelphia county:

Your petitioner, the Pullman's Palace Car Company, respectfully shows—

That it is the defendant in the above-entitled suit, and that the same was commenced on or about the 30th day of July, 1885, in said court of common pleas No. 2 of Philadelphia county; that your petitioner was, at the time of bringing said suit and still is, a corporation organized under the laws of the State of Illinois and a citizen of said State of Illinois, and the plaintiff, The Central Transportation Company, was and is a corporation organized under the laws of the State of Pennsylvania and a citizen of the State of Pennsylvania.

That the matter in dispute in said suit and for which said suit is brought exceeds the sum of five hundred dollars, exclusive
10 of costs, and the defendant herewith files a bond, with good and sufficient surety, for the entering in the circuit court of the United States for the eastern district of Pennsylvania, wherein said suit is pending, on the first day of the next session of said court, a copy of the record in said suit, and for paying all costs that may be awarded by said circuit court if said court shall hold that such suit was wrongfully or improperly removed thereto, as provided by the statute of the United States.

Wherefore the defendant prays this honorable court that said bond may be approved and said suit be removed into the circuit court of the United States for the eastern district of Pennsylvania, and that this court proceed no further in the premises.

PULLMAN'S PALACE CAR COMPANY,
By HORACE PORTER, *Vice-Pres.*

11 STATE OF NEW YORK, } ss:
County of New York, }

Horace Porter, being duly sworn according to law, doth depose and say: I am the vice-president of the Pullman's Palace Car Company, the petitioner hereinbefore named. I have read the foregoing petition subscribed to by me and know the contents thereof, and the same is true, as I verily believe.

HORACE PORTER.

Sworn to and subscribed before me this 13th day of October, 1885.

[SEAL.] S. W. BRETZFIELD,
Notary Public (273), *New York Co.*

STATE OF NEW YORK, } ss:
City and County of New York, }

I, Patrick Keenan, clerk of the city and county of New
12 York and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that S. W. Bretzfield, before whom the annexed deposition was taken, was at the time of taking the same a notary public of New York, dwelling in said city and county, duly appointed and sworn and authorized to administer oaths to be used in any court in said State and for general purposes, and that his signature thereto is genuine as I very believe.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 13 day of Oct., 1885.

PATRICK KEENAN, *Clerk.*

13 (Endorsed:) 639. June term, 1885. C. P. No. 2. Central Transportation Company *vs.* Pullman's Palace Car Company. Petition. Filed Oct. 26, 1885. Jas. W. Fletcher, *pro* proth. Dickson.

Know all men by these presents that the Pullman's Palace Car Company, a corporation organized under the laws of the State of Illinois, and Joseph E. Goodman, of the city of Philadelphia, are
jointly and severally held and firmly bound unto the Central
14 Transportation Company in the penal sum of five hundred dollars; for which —, well and truly to be paid unto said The Central Transportation Company, its successors or assigns, — firmly by these presents.

Sealed with our seals this 26th day of October; A. D. 1885.

The condition of this obligation is such that if the said The Pullman's Palace Car Company, defendant in a suit now pending in the court of common pleas No. 2 for the city and county of Philadelphia, of the State of Pennsylvania, of June term, 1885, No. 639, shall, on the first day of the next session or term of the circuit court of the United States for the eastern district of Pennsylvania, enter a copy of the record in said suit, and shall enter the appearance of said

Pullman's Palace Car Company in said circuit court of the United States, and shall enter special bail in the cause, if special bail
15 were originally required, and pay all costs that may be awarded against them by said circuit court, if such court shall hold that said suit was wrongfully or improperly removed from said State court, then this obligation to be void, and otherwise to remain in full force and effect.

In witness whereof the said obligors have caused these presents to be duly sealed this twenty-sixth day of October, one thousand eight hundred and eighty-five.

PULLMAN'S PALACE CAR COMPANY,
By GEO. W. PULLMAN, *President.* [SEAL.]
JOS. E. GOODMAN. [SEAL.]

Attest:
[Seal Pullman's Palace Car Company.]
A. S. WEINSHEIMER, *Secretary.*

Sealed and delivered in presence of—
G. B. SMITH,
As to Jos. E. Goodwin.
A. C. LEVIN.

(Endorsed:) 639. J., '85. C. P. No. 2. Bond. Filed Oct. 26, 1885. Jos. W. Fletcher, *pro* proth'y.

16 COMMONWEALTH OF PENNSYLVANIA, } ss:
Philadelphia County, }

I, Wm. B. Mann, prothonotary of the court of common pleas No. two in and for said county, certify that the foregoing is a full and correct copy of the whole record of the case herein stated, wherein Central Transportation Company is plaintiff and Pullman's Palace Car Company is defendant, as the same remains of record before the said court, at No. 639 of June term, A. D. 1885.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court the 27th day of October, A. D. 1885.

[SEAL.] EUGENE J. LINDSAY,
Pro Prothonotary.

17 EASTERN DISTRICT OF PENNSYLVANIA:

Circuit Court of the United States in and for the Eastern District of Pennsylvania, Third Circuit. October Session, 1885.

CENTRAL TRANSPORTATION CO. }
vs. } No. 14.
PULLMAN'S PALACE CAR CO. }

The Central Transportation Company, by John G. Johnson, its attorney, complains of Pullman's Palace Car Co., which was summoned to answer the said Central Transportation Company in an action of covenant, for that whereas heretofore, to wit, on the seventeenth day of February, one thousand eight hundred and seventy,

by a certain indenture then made between the plaintiff, of the first part, and the defendant, of the second part, which indenture, sealed with the seal of the defendant, the plaintiff now brings into court, it was covenanted and agreed as follows:

18 *Lease.*

This indenture, made this seventeenth day of February, A. D. one thousand eight hundred and seventy, between the Central Transportation Company, a corporation, of the Commonwealth of Pennsylvania, having their place of business in the city of Philadelphia, of the first part, and Pullman's Palace Car Company, a corporation, of the State of Illinois, having their place of business in the city of Chicago, of the second part —:

Whereas the parties hereto are engaged in the business of manufacturing railway cars, generally known as sleeping cars, under certain patents belonging to them, respectively, and of hiring the same to railroad companies under written contracts, to be used and employed on and over the lines of the roads of said railroad companies, and receiving therefor income and revenue by the sale to passengers of the berths and accommodations therein; and

Whereas the demands of the public for increased means of personal comfort and convenience in traveling, of avoiding repeated changes of cars over long routes of railroads, the necessity for affording, at fair and reasonable rates, these advantages, which cannot be extended by railroad companies themselves, require that every possible means should be adopted to meet such demands by avoiding the inconvenience and curtailing the expenses inci-
19 dental to the maintenance of the business management and organization of two separate corporations; and

Whereas it is proposed that the party of the first part (having authority so to do under an act of the General Assembly of the Commonwealth of Pennsylvania entitled "An act to extend the charter of the Central Transportation Company, to empower them to lease their property and increase their capital stock," and approved the ninth day of February, one thousand eight hundred and seventy, and duly accepted) shall demise, transfer, and set over unto the party of the second part, their successors and assigns, all their cars, contracts, and patent rights and personal property, and that the second party (having authority — to do under the said act of assembly and by virtue of the powers in them vested by their act of incorporation from the State of Illinois) should take the same; and

Whereas at a meeting of the directors of the first party held at Philadelphia on the eleventh day of February, one thousand eight hundred and seventy, and at a meeting of the directors of the second party held in Chicago on the sixteenth day of February, one thousand eight hundred and seventy, this present form of contract by and between the parties hereto was submitted for their approval, and, the same being by them at said meeting approved, the respective presidents were authorized, for and as the act and deed of

the said parties of the first and second parts, duly to execute and deliver the same:

Now, this contract witnesseth: That the party of the first part,
20 for and in consideration of the money, covenants, and agreements hereinafter mentioned and contained on the part of the second party, their successors and assigns, to be paid, kept, and performed, hath granted, demised, transferred, and set over, and by these presents do grant, demise, transfer, and set over, unto the second party, their successors and assigns, and the second party take—

Item 1. All and singular one hundred and nineteen railway sleeping cars, furniture, bedding, bed clothing, and apparel thereunto belonging or appertaining.

Item 2. All and singular their rights, interests, and claims of, in, and to sixteen contracts (copies of each whereof are hereto attached and made part hereof and numbered, respectively, Nos. 1, 2, 3, etc.) entered into by and between the party of the first part and the several railroad companies, parties, respectively, thereto, for and in respect to the use and employment of said cars on and over the respective lines of said railroad companies.

Item 3. All and singular their right, title, and claim of, in, and to seventeen patent rights, secured by letters patent (an assignment whereof is hereto attached and made part hereof and numbered A) as fully and as entirely as the first party are or may be entitled to the same and to any renewal or extension thereof.

Item 4. And generally all their personal property, rights, credits, moneys, and effects, rights of actions, money due and to become due from licenses heretofore granted; to have and to hold the above-demised property, and all income, revenue, and profit to be
21 derived therefrom, to the party of the second part, their successors and assigns, as follows:

Item 1. The said one hundred and nineteen cars, furniture, bedding, bed clothing, and apparel for and during the term of ninety-nine years from the first day of January, A. D. one thousand eight hundred and seventy, to be fully completed and ended.

Item 2. Each of the said contracts for and during the full term of the duration of each thereof, respectively.

Item 3. Each of the said patent rights for the full end and term of the duration of the letters patent therefor, respectively, and for the full end and term of any renewal or extension of the same, respectively.

Item 4. All the said personal property, rights, credits, moneys, and effects, rights of action, money due and to become due from licenses heretofore granted for and during the said term of ninety-nine years from the first day of January, A. D. one thousand eight hundred and seventy, or during existence of said licenses or of any renewal or extension thereof, all and every of which shall be taken subject to all debts and pecuniary liabilities of the first party up to the said first day of January, one thousand eight hundred and seventy, as set forth in Exhibit "B."

In consideration whereof the party of the second part covenant with the party of the first part as follows:

22 1st. That they shall and will pay to the said first party, their successors and assigns, annually the sum of two hundred and sixty-four thousand dollars ($264,000.00) in lawful money of the United States during the entire term of ninety-nine years, as aforesaid, the same to be paid to the treasurer or other authorized officer, at the principal place of business or office of said first party, in quarter-yearly installments of sixty-six thousand dollars ($66,000.00), the first quarter's payment to be made on the first day of April, one thousand eight hundred and seventy, and shall and will pay all debts and pecuniary liabilities of the first party due and owing by them up to the first day of January, A. D. one thousand eight hundred and seventy, as set out in Exhibit "B."

2nd. That they shall and will, so long as the said assigned contracts exist and for the period of any new or other contract with the said railroad companies or either of them or their successors and assigns of like general character, in good faith continue and carry on the business as authorized by their charter.

3d. That they shall and will during the said term of ninety-nine years keep or cause to be kept in good order and repair, or renewed and reconstructed as often as may be needful, the said one hundred and nineteen cars and the furniture, bedding, bed clothing, and apparel thereof.

23 4th. That in the event of the failure or omission of said second party, their successors or assigns, to pay any of the said quarterly payments for the period of thirty days after the same shall be due and payable, then and in such case this contract may, at the option of the party of the first part, be declared null and void, and it shall and may be lawful for them or for any person or persons or corporation or corporations selected by them, either with or without any process or writs for such purpose, to take possession of and again to hold the said one hundred and nineteen cars hereby demised or as the same may be renewed or reconstructed, as aforesaid, wherever the same may be found, with their furniture, bedding, bed clothing, and apparel, and in such case the second party covenant and agree to deliver possession of said cars to such person or persons or corporation or corporations so selected, and to assign and transfer to said first party the said contracts or any new contracts with the said railroad companies for and in respect to the use and employment of sleeping cars over their lines of railroads and any unexpired patent right or renewal or extensions of the same hereinbefore assigned and transferred, and shall and will cease to operate or employ or cause to be operated or employed any cars whatsoever on or over the said lines of railroads, it being understood that such action on the part of the first party in the said event shall not release or discharge the second party, their successors or assigns, from liability from damage and loss which may be sustained by said first party owing to any such breach of contract or default.

24 5th. That they will not assign or transfer their contract without the consent in writing of the party of the first part,

nor make or create any debt or mortgage upon the property hereby demised which can or shall in any manner take precedence of the rights of the first party under their contract, or in anywise to deprive the party of the first part from their right to claim and take said property under the terms hereof; and the said parties hereto further covenant and agree with each — as follows:

6th. That the parties hereto shall and will at all proper times and manner exert their influence to obtain renewal of new contracts with said railroad companies for and in respect to the use and employment of the cars of the second party on and over their lines of railroads in carrying on their said business, and the first party shall and will not engage in the business of manufacturing, using, or hiring sleeping cars while this contract remains in full force and effect.

7th. That such renewed or new contract may be made in the name of the party of the second part, their successors and assigns, but in the event of the termination of this contract under any of the clauses hereof the same shall be thereupon assigned and transferred unto the party of the first part.

8th. In the event that any of the railroad companies mentioned in the assigned contracts shall at any time during this agree-
25 ment refuse to permit the cars of the second party to be run on and over their respective lines of roads, so that by reason of such prevention or refusal the profits, income, — revenue derived from and under any other remaining contracts with other and remaining railroad companies mentioned in the assigned contracts shall fall below the sum of two hundred and sixty-four thousand dollars ($264,000.00), then and in that event said second party shall have the right either to declare this contract null and void and surrender to said first party the said hereinbefore-demised property or shall and will pay in like manner, in lieu of the said sum of two hundred and sixty-four thousand dollars ($264,000.00), such sum or share of the net revenue from the remaining lines of roads as the parties hereto may at that time agree upon.

9th. And the party of the second part covenant and agree with the party of the first part that on the expiration of the said term of ninety-nine years they will redeliver to the said first party the said one hundred and nineteen cars, furniture, bedding, bed clothing, and apparel in like good order as the same now are, with such additions, betterments, and improvements as shall be made thereto or in renewal or substitution thereof, together with any unexpired contracts between said second party and of the railroad companies mentioned in the assigned contracts for and in respect to the use and employment of said cars on and over their lines of railroads.

26 In witness whereof the said parties hereto have caused their respective corporate seals to be hereto affixed and the same to be attested by the signatures of their respective presidents and secretaries the day and year first above written.

[SEAL.] O. W. CHILDS, *President.*

Witnesses:
G. C. FRANCISCUS.
J. ERNEST GOODMAN.

Attest: J. F. COTTRINGER, *Secretary.*
[SEAL.] GEO. M. PULLMAN, *President.*

Witnesses:
WIRT DEXTER.
W. F. WHITEHOUSE.

Attest: CHAS. W. ANGELL, *Secretary.*

By virtue of which said indenture the defendant afterwards, to wit, on the seventeenth day of February, A. D. one thousand eight hundred and seventy, entered into possession of the said demised property; nevertheless, the plaintiff in fact saith that after the making of the said indenture and during the said term by said indenture created and before the commencement of this suit, to wit, on the first day of July, A. D. one thousand eight hundred and eighty-five, a large sum of money, to wit, the sum of one hundred and thirty-two thousand dollars, of the rent or sums of money covenanted to be paid by said defendant in and by said indenture for two quarters of a year of the said term ending on the day and year
27 last aforesaid became and was due and owing from the defendant to the plaintiff and still is in arrears and unpaid to the plaintiff, contrary to the said covenant of the defendant, to the plaintiff's damage of five hundred thousand dollars.

And also for that whereas heretofore, to wit, on the seventeenth day of February, A. D. one thousand eight hundred and seventy, by a certain other indenture then made between the plaintiff, of the first part, and the defendant, of the second part, which indenture, sealed with the seal of the defendant, the plaintiff now brings into court, the plaintiff did demise and lease unto the defendant, *inter alia*, one hundred and nineteen railway sleeping cars, furniture, bedding, bed clothing, and apparal thereunto belonging or appertaining for the term of ninety-nine years from the first day of January, A. D. one thousand eight hundred and seventy; and the said defendant did thereby covenant, promise, and agree to and with the plaintiff that it, the said defendant, should and would during the said term of ninety-nine years keep or cause to be kept in good order and repair, or renewed and reconstructed as often as may be needful, the said one hundred and nineteen cars and the furniture, bedding, bed clothing, and apparel thereof; by virtue of which demise the defendant then entered into possession of the said one hundred and nineteen cars and the furniture, bedding, bed clothing, and apparel thereof, and has continued in possession thereof from thence hitherto; yet the defendant did not nor would not, after making of the said indenture, keep
28 or cause to be kept in good order and repair or renewed and reconstructed as often as was needful the said one hundred and nineteen cars and the furniture, bedding, bed clothing, and ap-

parel thereof, but, on the contrary thereof, the defendant, after the making of said indenture and during the said term, and whilst it was so possessed of the said demised property, to wit, on the first day of July, A. D. one thousand eight hundred and seventy-five, and from thence for a long time, to wit, until the commencement of this suit, suffered and permitted the said one hundred and nineteen cars and the furniture, bedding, bed clothing, and apparel thereof to become and *continued* the same have been during all the time last aforesaid worn, broken, destroyed, dilapidated, wasted, decayed, and destroyed for want of needful and necessary maintaining, repairing, reconstructing, and renewing the same; by reason whereof the said one hundred and nineteen cars, with the furniture, bedding, bed clothing, and apparel thereof, have become ruined and useless, to the damage of the plaintiff five hundred thousand dollars.

And also for that whereas heretofore, to wit, on the seventeenth day of February, A. D. one thousand eight hundred and seventy, by a certain other indenture then made between the plaintiff, of the first part, and the defendant, of the second part—which indenture, sealed with the seal of the defendant, the plaintiff now brings into court—the plaintiff did demise, transfer, and set over to the
29 defendant, for the term of ninety-nine years from the first day of January, A. D. one thousand eight hundred and seventy, all and singular the right, interests, and claims of the defendant of, in, and to sixteen contracts, copies of which were thereto attached, entered into by and between the plaintiff and the several railroad companies, parties, respectively, thereto, for and in respect to the use and employment of certain cars, also demised by plaintiff to defendant, on and over the respective lines of said railroad companies; and the said defendant did thereby covenant, promise, and agree to and with the plaintiff that it, the said defendant, should and would, at all proper times and manner, exert their influence to obtain renewals or new contracts with said railroad companies for and in respect to the use and employment of the cars of the said defendant on and over their lines of railroads in carrying on their said business, yet the defendant did not nor would not, from time to time after the making of said indenture and during the said term, exert its influence to obtain renewals or new contracts with said railroad companies for and in respect to the use and employment of the said cars over their lines of railroads in carrying on its said business, but, on the contrary thereof, allowed all of said contracts to become forfeited, avoided, and terminated, and exerted its influence to prevent renewals thereof, and refused and neglected to enter into new contracts with said railroad companies for the use and employment of said cars; by means whereof the plain-
30 tiff lost the benefit and advantage of said contracts, which would otherwise have been renewed for its benefit, to the damage of the plaintiff five hundred thousand dollars; and therefore it brings its suit.

JOHN G. JOHNSON,
Per F. P. P.,
Att'y for Pl'ff.

(Endorsed:) 14. Oct. sess., 1885. U. S. C. C., E. D. Pa. Central Transportation Co. *vs.* Pullman's Palace Car Co. Narr. Enter rule to plead in eight days, or judgment *sec. reg.* John G. Johnson, per F. P. P., att'y for pl'ff. Filed Nov. 5, 1885.

31 And afterwards, to wit, on the 14th day of November, A. D. 1885, the defendant, by its attorney, comes into court here and files its plea; which, being read, is as follows, to wit:

In the Circuit Court of the United States for the Eastern District of Pennsylvania, of October Sessions, 1885.

CENTRAL TRANSPORTATION COMPANY
vs.
PULLMAN'S PALACE CAR COMPANY. } No. 14.

The defendant pleads covenants performed—covenants performed *absque hoc.*

SAM'L DICKSON,
For Def't.

(Endorsed:) 14. October sessions. 1885. U. S. C. C. Central Transportation Company *vs.* Pullman's Palace Car Company. Pleas. Filed Nov. 14, 1885. Dickson.

32 And afterwards, to wit, on the 15th day of June, A. D. 1886, the plaintiff, by its attorney, comes into court here and files its replication to special plea; which, being read, is as follows, to wit:

U. S. C. C. Oct. Sess., 1885.

CENTRAL TRANSPORTATION CO.
vs.
PULLMAN'S PALACE CAR CO. } No. 14.

The plaintiff, as to the special plea of the defendant by it pleaded, saith that the said plaintiff and the said defendant did not make the agreement in writing in said plea set forth in manner and form as therein pleaded.

And this the plaintiff prays may be inquired of by the country, &c.

JOHN G. JOHNSON,
Per F. P. P.,
Att'y for Pl'ff.

(Endorsed:) 14. Oct. Sess., 1885. U. S. C. C. Central Trans. Co. *vs.* Pullman's Pal. Car Co. Replication to special plea. Filed June 15, 1886. J. G. Johnson.

33 And thereupon it is ordered that a jury come to try the issue joined in this case.

And afterwards, to wit, on the 15th day of June, A. D. 1886, come the parties aforesaid, and the jurors of the jury aforesaid, being

called, likewise come, to wit, William L. Torbert, Lewis S. Hartman, Joseph Thomas, Thomas J. Ridgway, T. Ross Hanson, Richard Downing, Samuel Boyd, James C. Sutton, Sr., Thomas J. Pennypacker, William F. Donaldson, Henry R. Guss, William Lanmaster, who are duly empanelled, returned, chosen, tried, and sworn or affirmed to speak the truth in the issue joined in this case.

And afterwards, to wit, on the 21st day of June, A. D. 1886, the plaintiff, by its attorney, moves the court to amend its declaration by withdrawing all the counts saving the first.

34 Whereupon the same is allowed, and the declaration is amended accordingly.

And afterwards, to wit, on the 22nd day of June, A. D. 1886, the jurors aforesaid, upon their oaths and affirmations aforesaid, respectively, do say that they find for the plaintiff and assess the damages at one hundred and nineteen thousand seven hundred and twenty-nine dollars and thirteen cents ($119,729.13).

And afterwards, to wit, on the 23rd day of June, A. D. 1886, the defendant, by its attorney, moves for a new trial and files the following reasons in support thereof:

CENTRAL TRANSPORTATION CO. *vs.* PULLMAN'S P. C. CO.

35 And now, June 23, 1886, the defendant moves for a new trial and assigns the following reasons therefor:

First. That the verdict was against the weight of the evidence.

S. DICKSON,
Att'y for Def.

Endorsed: No. 14. October sess., 1885. C. C. U. S., E. D. of Pa. Central Transportation Co. *vs.* Pullman's Palace Car Co. Motion and reasons for a new trial. Filed June 23, 1886.

36 And afterwards, to wit, on the 23rd day of June, A. D. 1886, came the parties aforesaid, and this cause being called for argument on motion for new trial, and having been argued by counsel for the respective parties, and the premises being seen and fully understood by the court, they take further time for consideration.

And afterwards, to wit, on the 24th day of June, A. D. 1886, the court, being fully advised of the premises, order that the motion for a new trial be, and the same is hereby, denied, and that judgment be entered on the verdict in favor of plaintiff and against the defendant for the sum of one hundred and nineteen thousand seven hundred and twenty-nine dollars and thirteen cents ($119,729.13);

37 whereupon judgment is entered accordingly.

And afterwards, to wit, on the seventeenth day of July, A. D. 1886, the defendant, by its attorney, file the following bill of exceptions, to wit:

38 In the Circuit Court of the United States for the Eastern District. October Sessions, 1885. No. 14.

Be it remembered that in the said sessions of October, A. D. 1885, came the said plaintiff into the said court and impleaded the said defendant in a certain plea of covenant, &c., in which the said plaintiff declared (*prout narr.*) and the said defendant pleaded (*prout* pleas). And thereupon issue was joined between them.

And afterwards, to wit, at a session of said court, held at the district aforesaid before the Honorable William Butler, judge of the said court, on fifteenth day of June, A. D. 1886, the aforesaid issue between the said parties came to be tried by a jury of the said district, for that purpose duly impanneled (*prout* list of jurors), at which day came as well the said plaintiff as the said defendant, by their respective attorneys, and the jurors of the jury aforesaid impanneled to try the said issue, being also called, came, and were then and there in due manner chosen and sworn or affirmed to try the said issue; and upon the trial the counsel of the said plaintiff offered in evidence a certain writing or lease, dated February 17th, 1870, between the Central Transportation Company and Pullman's Palace Car Company, which lease was the same as is set out at length in the declaration in this cause, and called as a witness—

JOHN S. STEVENS, —, having been duly sworn, was examined as follows:

By Mr. JOHNSON:

Q. You are the president of the Central Transportation Company and have been since April, 1885?

A. Yes, sir.

Q. Will you tell the jury whether the rent for the 1st of April, 1885, and the 1st of July, 1885, was paid to your company?

A. We received a portion of the rent, which was paid up, I think, to January 17th; that is all the moneys we have received; we have had repeated tenders of a small amount.

Q. Up to January 17th you have been paid?

A. Yes, sir; I think that is the day. I didn't charge my mind.

Q. The cars and car furniture and bedding mentioned in that agreement, have they been delivered to the company?

A. No, sir.

39 Cross-examination by Mr. DICKSON:

Q. The rates tendered were at the rate of $66,000 a year?

A. At the rate of $66,000 per annum instead of at the rate of $66,000 every three months.

Q. Who was your predecessor as president?

A. Mr. John T. Bingham.

Q. Who was the predecessor of Mr. Obdyke?

A. Mr. Cottringer.

Q. When were you elected president?

A. In April, 1885.

Q. You and Mr. Obdyke were elected at the same time?
A. Yes, sir; at the annual meeting of 1885.

Plaintiff closes.

Mr. Dickson offers in evidence agreement, dated 27th February, 1885, between the Central Transportation Company and Pullman's Palace Car Company.

Mr. Johnson objected to the offer until the authority to execute the agreement was proved.

Mr. DICKSON: The seal proves that.

Mr. JOHNSON: I want the authority of the board of directors. I do not question the signatures.

(The seal and signatures to the agreement are admitted.)

Mr. JOHNSON: My objection is to the admission of the instrument until they have proved proper authority.

(Objection sustained. Exception for defendant.)

Adjourned to Wednesday, June 16th, 1886, at 10 o'clock a. m.

WEDNESDAY, *June 16th*, 1886.

The COURT: With the assent of plaintiff's counsel the court, for the purpose of reaching a question of fact which it is informed is involved respecting the delivery of the paper in question here, formally overrules the objection of Mr. Johnson of yesterday, reserving to the plaintiff the right to raise the question at any other stage of the litigation when it may be proper.

(Counsel for defendant except to the reasons given by the court for overruling the objection, and especially to that portion of the reasons which reserves the right to the plaintiff to raise this point at any other stage of the proceedings.)

Defendant puts in evidence the said agreement and rests.

39*a* Said agreement was in the words and figures following:

This agreement, made the twenty-seventh day of February, 1885, by and between the Central Transportation Company, hereinafter called the Transportation Company, and Pullman's Palace Car Company, hereinafter called the Pullman Company, witnesseth:

Whereas the Transportation Company did heretofore, by indenture bearing date the 17th day of Fedruary, 1870, lease unto the Pullman Company certain railway sleeping cars, to the number of 119, with the furniture, bedding, and apparel thereunto belonging, and did also therein and thereby assign and transfer to the said Pullman Company 16 certain contracts of various terms of life with railroad companies, as therein mentioned, for the operation of said sleeping cars over and upon their several lines of railroad, a copy of which indenture of lease is hereto attached and to which reference is made;

And whereas in said lease it was, amongst other things, provided as follows, to wit:

"Eighth. In the event that any of the railroad companies men-

tioned in any of the assigned contracts shall at any time during this agreement refuse to permit the cars of the second party to be run on and over their respective lines of road, so that by reason of such prevention or refusal the profits, income, and revenues derived from and under any other and remaining contracts with other and remaining railroad companies mentioned in the assigned contracts shall fall below the sum of two hundred and sixty-four thousand dollars, then and in that event said second party shall have the right either to declare this contract null and void and surrender to said first party the said hereinbefore-demised property or shall and will pay in like manner, in lieu of said two hundred and
39*b* sixty-four thousand dollars, such sum or share of the net revenues from the remaining lines of road as the parties hereto may at that time agree upon."

And whereas certain of the railroad companies mentioned in the assigned contracts have refused to permit the cars above mentioned to run over their respective roads, leaving certain of the Pennsylvania lines, so called, substantially the only remaining lines of railroad mentioned in said assigned contracts, and upon which lines such Pullman Company has been and is operating a portion of the cars originally demised to it as aforesaid, or cars substituted therefor, under a contract with the Pennsylvania Railroad Company, dated the — day of ——, and which expired on the 27th day of January, 1885;

And whereas, in consequence of the expiration of its contract with the Pennsylvania Railroad Company aforesaid, the Pullman Company, pursuant to its covenants in said lease in that regard and with the approbation of the Transportation Company and its influence exerted as far as practicable, has been negotiating a new contract for the operation of sleeping cars over and upon the lines of railroad owned and controlled by said railroad company, a copy of which contract is hereto attached and made part of this agreement;

And whereas the income and revenue to be derived from and under such proposed contract, applicable to the payment of rentals to the Transportation Company under the lease aforesaid, will fall much below the sum of two hundred and sixty-four thousand dollars, and said contract, amongst other things, contains provisions for its termination upon the happening of certain events, at the option of the railroad company or at the option of the Pullman Company, as well as for the purchase by the railroad company of the cars and equipment embraced therein, in whole or in part, and for the reduction of sleeping-car rates and the revenues to be derived therefrom by the Pullman Company, upon conditions therein specified;

39*c* And whereas it has become necessary that the lease aforesaid should be modified in respect to the rentals to be paid the Transportation Company and otherwise, as herein provided, and for that purpose the board of directors of said company did authorize the execution of this agreement;

And whereas the capital stock of said Transportation Company consists of forty-four thousand shares of the par value of fifty dol-

lars each, representing at the date hereof the absolute ownership, free and unincumbered, of the cars and equipment above mentioned, together with a surplus fund invested in United States bonds to the value of six hundred and sixty thousand dollars or thereabouts, under a certain deed of trust dated — day of ——:

Now, in consideration of the premises, the parties do agree as follows:

First. The Pullman Company shall and will pay the Transportation Company the annual rental of three per cent. upon its capital stock, the same being equivalent to the sum of sixty-six thousand dollars, in equal quarterly installments, together with twenty-five per cent. of the taxes to be paid by the said Transportation Company to the State of Pennsylvania, in lieu and in stead of the sum of two hundred and sixty-four thousand dollars aforesaid, with the option to each shareholder of said Transportation Company to exchange his or her stock for the stock of the Pullman Palace Car Company at the rate of four shares of Transportation for one share of Pullman stock, provided such exchange be made on or before the 17th day of April, 1885.

Second. In case and as often as the Pennsylvania Railroad Company shall purchase an interest in the cars and equipment embraced in said proposed contract after the expiration of five years from this date, or in case and as often as the rates and revenues derived by the Pullman Company shall be reduced under the provisions thereof, at any time, the annual rental herein provided shall
39*d* be readjusted by the parties proportionately, and, failing agreement thereon, such a new rental shall be fixed by three appraisers, one of whom shall be selected by each of the parties and the third shall be chosen by the two so selected. The decision of the majority of them shall be binding and conclusive upon the parties.

Third. Upon the termination of said proposed contract from any cause the Pullman Company will surrender to the Transportation Company all the cars and equipment in said lease demised, and as therein provided, or the said company will surrender such portion thereof as shall not have been purchased by the Pennsylvania Railroad Company under the provisions of said contract, and will account for and pay over to the Transportation Company all proceeds of the cars and equipment of said company so purchased.

Fourth. This agreement shall take effect as of the 27th day of January, 1885.

In witness whereof the parties have caused to be set hereto their corporate seals, duly attested, and the signatures of their respective officers hereto duly authorized.

THE CENTRAL TRANSPORTATION COMPANY,
By JOHN C. BINGHAM, *President.*
Attest: J. F. COTTRINGER, *Sec'y.*
PULLMAN'S PALACE CAR COMPANY,
By GEO. M. PULLMAN, *President.*
Attest: A. S. WEINSHEIMER, *Secretary.*

Plaintiff's Testimony in Rebuttal.

JOHN S. STEVENS having been recalled, Mr. JOHNSON stated as follows:

I propose to prove by this witness that subsequently to April, 1885, as president of the Central Transportation Company, he had several interviews with Mr. Pullman, the president of the Pullman Palace Car Company, for the purpose of arranging a settlement of the difficulties between the two companies, and that in the course of the conversation concerning the alleged modified lease Mr. Pullman, president of the company, admitted that the same had been delivered to him with the knowledge on his part that it required the approval of the stockholders of the Central Transportation Company to make it binding, and that it was delivered with the understanding that it would not bind the company until such approval had been obtained, he remarking that he would take the chances of obtaining such approval.

(Objected to by defendants because parol evidence cannot be received to show that the delivery of a deed to the grantee was made conditionally, because it would not be within the scope of the authority of the president of the corporation defendant to make any such admission. Objection overruled. Exception by defendant.)

Mr. JOHNSON (to the witness, Mr. Stevens): Subsequently to your election to the presidency of this company, in April, 1885, you had interviews with Mr. Pullman, the president of the Pullman Palace Car Company?

A. Yes, sir.

Q. Do you remember a meeting in which you discussed with him the question of this alleged modified lease?

A. Yes, sir.

Q. Where was it held?

A. At the Continental Hotel.

Q. Please state what took place. In the first place, who was present?

A. Mr. Pullman, General Horace Porter, Mr. Bullitt, Mr. Obdyke, and Mr. Brooks, I think.

Q. Mr. Brooks was one of your directors?

A. Yes, sir.

Q. About when was this?

A. I think it was in the month of June.

Q. In the evening?

A. I think so. We had several interviews. I can't just get them straightened.

Q. Please state what was said on this particular subject.

A. We had been talking for some minutes about other matters, and then the question came up in regard to the modified lease, and I asked the question of Mr. Pullman, "Did you not know that that lease was of no avail unless it was confirmed by the stockholders as

per their resolution?" He said, "Yes; but I take my chances on that." That was the answer to that particular question.

The COURT: Repeat your question.

A. I asked him if he was not aware that the modified lease that he spoke of had to be submitted to the stockholders for their approval before it was binding, and he said yes, but he took his chances on that.

By Mr. JOHNSON:

Q. Do you know whether there was a stockholders' meeting called for the purpose of determining whether it would be approved or not?

(Objected to.)

A. There was.
Q. There is a minute of that meeting, is there?
A. Yes, sir.

40½ Cross-examination by Mr. BULLITT:

Q. There was a great deal of talk there, wasn't there?
A. A great deal; yes, sir.
Q. How long did that interview last?
A. I should judge an hour.
Q. Didn't it last a couple of hours—until towards ten o'clock?
A. It was getting pretty late when we got away.
Q. Was not pretty much the whole subject of the relations of the Pullman Company and the Central Company the subject of conversation?
A. The largest part of the time the——
Q. I do not ask you the details. I only want to know if that was not the general subject talked about.
A. Yes, sir; that was the subject of conversation, of course; most of the time was occupied in listening to Mr. Pullman repeat the same statements that he had made on a former occasion.
Q. Do you or not recollect that on that occasion Mr. Pullman stated that he had been advised by counsel that that lease was absolute from having been executed and delivered by the directors, and that the approval of the stockholders was not essential to its validity?
A. No, sir.
Q. You do not recollect his saying that?
A. No, sir.
Q. Don't you recollect his saying anything about his counsel in Chicago having advised him that the execution by the directors was valid?
A. I have no recollection of that kind.
Q. You have no recollection of his having referred to the fact that he was advised by counsel that that deed was good from being delivered and executed by the board of managers?
A. No, sir; I remember very distinctly asking him a question, to

which he replied to me in this way: "I don't propose, Mr. Stevens, to give you my line of defense." I remember his replying to me in that particular way.

By the COURT:

Q. Can you state the question to which that was a reply?

A. I said to him, "Then, Mr. Pullman, you are going to drive us into litigation; I feel that it is you that is going to force us into litigation in this matter." Then I asked him a question in regard to whether he was going to claim that that lease—the modified lease—was legal and binding upon our company, and he replied, "I don't propose to give you the points of my defense." Mr. Bullitt himself will recollect that, I think, very distinctly.

By Mr. BULLITT:

Q. I cannot recall to your memory, then, anything as having been said at that meeting by him to the effect that he had been advised that the board of managers had the power to execute that lease?

A. No, sir; because I am satisfied——

Q. I do not ask you what your reasons are. I ask you for the facts.

A. No, sir; I have no recollection, I will frankly state.

41 Q. Do you recollect any conversation at that time in which Mr. Pullman stated his relations with the Pennsylvania railroad?

A. Yes, sir.

Q. Do you remember the fact that he said that he could not make an arrangement with the Pennsylvania railroad until he had first gotten and concluded on a definite contract with the Central Transportation Company?

A. Well, you put that in rather different words. I remember his distinctly stating to us that it was impossible for him to compete, or at least the officers of the Pennsylvania Railroad Company refused to make a lease with him, until he had made arrangements with the Central Transportation Company; that is the substance of it. I do not think just the very words that you stated were used.

Q. Let me see whether you have not got that a little wrong.

A. I hope not. I don't want to get it wrong.

Q. I am perfectly satisfied of that. I do not think that you and I could ever misunderstand each other about a thing like that. I am perfectly sure that you will state what you believe to be the exact facts, and I do not want you to suppose that my questions mean anything else. We are all liable, however, to slips of memory. Was it not this, that Mr. Pullman said that he or the Pullman Company could not enter into a contract imposing such obligations as would be imposed upon the Pullman Company in making such a contract with the Pennsylvania railroad without first having his arrangements with the Central Transportation Company?

A. In substance, yes; but not in the particular way that you put it.

Q. Please state it in your own way, because, of course, I am only asking you to give the substance of what he said on that subject.

A. If my recollection is good he said that he couldn't make a contract, or the Pennsylvania Railroad Company—that was it—the Pennsylvania Railroad Company wouldn't make a new contract with him or a new lease with him until he had arranged this new lease with the Central Transportation Company. Now, I may not give the exact words, but that is the substance of it.

Q. Did he not in that conversation state to you that the Pennsylvania Railroad Company had refused to renew the contract which expired on the 27th of January, 1885?

A. Yes, sir; he undoubtedly told me that.

Q. Did he not state to you in that conversation that Mr. Roberts and Mr. Cassatt, or one or both of them, had said that the Pennsylvania Railroad Company would make no contract with the Pullman Palace Car Company which would allow them to make over six per cent. per annum upon the capital invested in the cars running upon the Pennsylvania railroad?

A. I don't think he stated that at that time. I think he stated that in a circular that he issued to our stockholders—something of that kind.

42 Q. Did he not that night state that they refused to allow him to make any such profit as he had been making, saying that the Pennsylvania railroad could stock their road with sleeping cars from a car trust at five per cent. per annum interest?

A. He may have said that, but I am so familiar with that from having read it in a circular that he issued and sent to each one of our stockholders—he may have said it on that occasion, but I am familiar with just the very statement that you make from the fact that Mr. Pullman, or at least the Pullman Palace Car Company, did send it to each one of our stockholders, in which that fact was stated, and he may possibly have mentioned it then and there.

Q. Did he not in that conversation state to you that the best terms that he could get from the Pennsylvania Railroad Company would not allow him to make six per cent. per annum upon the capital invested?

A. Yes, sir; and I asked him then and there to give me the facts and figures to prove it.

Q. But he did make that statement?

A. Yes, sir; he made that statement.

Q. Did he say in that conversation that if he paid your company $66,000, which he had agreed to pay, he would get no interest upon the capital invested?

A. He told me that if he paid our company $66,000 per annum he would pay us more than he would earn.

Q. Not allowing any interest at all on his capital?

A. That is what I understood him to say. Yes, sir; he stated that, along with some other things.

Q. Did he not state that those terms on the part of the Pennsylvania railroad were excessively onerous upon the Pullman Palace Car Company?

A. He did; yes, sir.

Q. Did he not say in that conversation that nothing would have induced him to enter into this contract with the Pennsylvania Company but the necessity that he was under of trying to take care of the stock which he then had on the road, and which would be worthless if he could not use it upon that road?

A. Possibly he did.

By the COURT:

Q. Do you remember it at all?

A. I remember that we had several interviews, and many things occurred.

Q. You either recollect it or do not recollect it?

A. I do not recollect it, although I don't doubt but what he did.

By Mr. BULLITT:

Q. I do not expect you to state the language, and am only trying to refresh your memory to some extent; but did he not state in that conversation, also, that the object in making this arrangement with the Pennsylvania railroad was not only to preserve the interest which he had in the stock then upon the road, but also the cars that the Central Transportation Company had or that he had leased from them?

A. Yes, sir; I think I heard him make that statement at least three or four times, and in every one of our interviews he made pretty much the same statement. It was quite a lengthy one,
43 occupying, on the first occasion, something like three-quarters of an hour, and without a particle of interruption. He went over all that statement to us, and at two of our other interviews he reiterated them almost *verbatim*, and no doubt he said it on that occasion.

Q. Then you have no doubt of it?

A. I have no doubt of it.

Q. This is all for the purpose of leading up to another question. Having given you that statement of which you speak, about which I have asked you, in which I understand you to affirm substantially what I have inquired of you about, did he not say that in view of these circumstances and the burdensome character of the contract with the Pennsylvania Railroad Company, which was the best that he could make—that he was unwilling to conclude an arrangement with the Pennsylvania Railroad Company until he had first made his contract with the Central Transportation Company, or words to that effect?

A. You asked me that before, and I think I answered that same question in these words—that he stated, as near as I can recollect, that the Pennsylvania Railroad Company refused to enter into the new lease with him until he had entered into a new lease, or at least a modification of the lease, with our company.

Q. Wasn't it that he would not enter into the contract with the Pennsylvania railroad until he had arranged with the Central Transportation Company?

A. Oh, no, sir; I didn't understand it so, and I remember distinctly asking him at that same time if he would show me the proposed lease with the Pennsylvania Railroad Company, and he told me that he had made, I think he said, something like eighteen or nineteen different leases; that every time he submitted a lease there were certain things stricken out of it and it had to be rewritten or remodeled, and I asked him then to please let me have the nineteenth edition of it, but he hadn't it yet then completed, and, if I understand rightly, the lease at that time with the Pennsylvania railroad was not signed. I don't know. I gathered that from my conversation with Mr. Pullman. This was in June.

Q. Do you recollect that he, in the interview to which you have referred, said that it was absolutely necessary that that paper, which is called the modified lease, should have been executed and delivered at that time so that he could report to Mr. Roberts that he was prepared to make the arrangement with the Pennsylvania railroad in order that it might go into Mr. Roberts' report to the stockholders?

A. Yes, sir; I remember that. I don't know that there was anything said about Mr. Roberts' report to the stockholders, but I remember about his saying that it was necessary to have this lease perfected before he could enter into one with the Pennsylvania railroad.

Q. Don't you recollect that he said in that conversation that he had so stated to the board of directors of the Central Transportation Company—that he must have their paper executed and delivered before he would report to Mr. Roberts that he was prepared to enter into the contract with the Pennsylvania railroad?

44 A. No, sir; I don't remember that he stated particularly that. He stated in substance just what I have said, as near as I can remember. I cannot say that he repeated just technically the words that you are putting into your question.

Q. Please do not understand that I want you to remember or ask for words. I ask you for the substance.

A. Then I tell you that I have already stated that he did say so in substance—that it was necessary to have this lease with the Central Transportation Company before he could perfect a lease with the Pennsylvania Company.

Q. Did he not say that he had so stated to the directors and officers of the Central Transportation Company at the time that paper was executed and delivered?

A. That I don't remember. I don't remember that he stated anything of that kind. He was making his statement to me personally and to the gentleman that was with me. I have no recollection; in fact I don't think he did. I don't think he mentioned the former board of directors in connection with the matter.

Q. Did he mention the fact that he had been in negotiation with the former board of managers for a year or eighteen months before the termination of the contract with the Pennsylvania railroad?

A. Yes, sir; he did. That was a well-known fact.

Q. Did he not state to you that he had stated to that board of

managers that the contract would lapse in January, 1885, and that he had explained to the directors of the Central Transportation Company the position in which he was placed, and that he had explained to them from time to time the negotiations with the Pennsylvania railroad?

A. Yes, sir; I think he did. He spoke of having a number of interviews with the former board of directors, or rather with a subcommittee of that former board. He spoke of having had a number of interviews with them.

Q. Did he not say that he had always explained to them fully and entirely the position of the negotiations with the Pennsylvania railroad?

A. I don't think that he made use of any language of that kind, but I have no doubt that he did explain to them. I don't recollect that he said anything of that kind.

Redirect examination by Mr. JOHNSON:

Q. Mr. Bullitt has broadened the line of inquiry which I did not care to go into at present. He has asked about interviews, and you have said that at one or other of the interviews Mr. Pullman said as you have testified. The object of these interviews was what?

A. To try to arrive at some settlement between the differences that were existing between the two companies in regard to the amount of rental.

Q. Did you or your board of directors who met him at any time concede any obligation upon you of that modified lease?

(Objected to.)

The COURT: He may state everything that was said fully, and you can ask him further whether or not there was anything said on a particular subject, so that you do not lead his mind.

45 Mr. JOHNSON: Beyond what you have already testified to what, if anything, was said concerning this modified lease being binding upon the Central Transportation Company?

A. The board of directors always——

Q. I mean at these interviews.

A. The board of directors that were there present—they were represented, as I say. In our different interviews on one occasion we had our full board present, and the matter was very thoroughly discussed, and Mr. Pullman and his counsel that were there present all knew that we repudiated this lease; that our stockholders had repudiated it, and that we felt that it was not binding at all upon our company.

Q. After that had been made known the discussion was concerning what subject or what object?

A. The discussion then came in regard to the settlement of the difficulties that there were between us, and the only difficulty was the amount of money that he was to pay us; and with a view to ascertain the facts I propounded a certain number of questions to Mr. Pullman, and asked him to give me certain information. He told me that it was impossible to give that information then and there,

but that if I would come or send to Chicago that he or his officers at the Pullman Company would take pleasure in giving me all the information or answers to the questions that we asked. I then arranged for Mr. Weckerly, our present secretary and treasurer, to go to Chicago to examine the books and bring us home the detailed facts that I wanted. Just previous to his starting he went to get a sleeping-car berth for Chicago, and they had none, but when he mentioned his name he found that there was one secured for him through the courtesy of the secretary of the Pullman Company. I think it had been reserved for him. He went out to Chicago, and immediately on his arrival there——

Q. Did he return?

A. He sent me a telegram.

Q. He ultimately returned?

A. Yes, sir; I ordered him to return to the city without the information.

Q. Did you get from him the information?

A. No, sir.

Q. Were there any subsequent interviews concerning that information with Mr. Pullman?

A. Yes, sir; I do not know that I can recall the date, but on one occasion, I think it was our last interview, I was at the Continental Hotel, and Mr. Pullman had a large roll of paper that purported to be answers to those questions. I thanked him for them, rolled them up, and said we would consider them.

Q. This was after Mr. Weckerly's visit, was it?

(Objected to.)

Mr. JOHNSON: I will not press it under the objection.

Mr. Johnson offers in evidence minutes of board of directors of 24th December, 1869, concerning the original lease and action of stockholders, and minutes of board of directors of 24th January, 1870, and minutes of board of directors of 18th April, 1870, all concerning the authorization of the lease and the approval of the stockholders of it.

Same read.

The minutes read were as follows:

45*a* *Minutes of Meeting of December* 24, 1869.

A special meeting of the directors of the Central Transportation Company was held this day, Dec. 24, 1869.

Present: O. W. Childs, G. C. Franciscus, E. C. Knight, G. R. Dykeman, W. C. Stevenson, A. Carnegie, James Young, and John Bingham.

The minutes of previous meeting were read and approved of.

Mr. Carnegie, chairman of the committee appointed at meeting of September the 16th to confer with the Pullman Palace Car Co. committee on the subject of a consolidation of the two companies, made the following report:

Your committee beg leave to report that in accordance with the

resolutions of board of September the 16th and October the 9th Messrs. Davis, Cottringer, and Carnegie, accompanied by Mr. Andrew Mehaffey (the commissioner appointed by your committee to investigate with Mr. G. L. Dunlap, commissioner appointed on the part of the committee of the Pullman Palace Car Co.), proceeded to Chicago, and there met the Pullman Palace Car Co.'s committee and their commissioner. It was proposed that before proceeding to business that the committees be authorized to give to each other an assurance that the award of the commissioners should be accepted as final. Your committee, not feeling authorized to go so far, requested time to receive your instructions. When you did give them the required authority Mr. Cottringer proceeded to Chicago and, in connection with Mr. Mehaffey, began the necessary investigation into the affairs of the Pullman Palace Car Co. A second meeting was had there between the parties, and as we pro-
45*b* ceeded in our negotiations the idea of one or the other leasing one of the properties seemed desirable. For many reasons we were not favorably situated to lease the other. We therefore operated with a view to lease our property to the Pullman Palace Car Co. Your committee believed it best to get whatever rental we could in the form of a guaranteed certificate, and, after much negotiation, we made a proposition as follows (which has been accepted by the other party), and which we beg now to submit for such action as you may be pleased to take: The proposition is that the Central Transportation Company is to receive an amount equal to twelve per cent. per annum guaranteed upon its present stock and upon ten per cent. additional. It is further proposed to request that the certificates received instead of bearing twelve per cent. should be based upon six per cent., which would, of course, double the nominal amount. The subject is now submitted to you for final action.

(Signed) A. CARNEGIE, *Chairman.*
G. C. FRANCISCUS.
E. C. KNIGHT.
P. R. DAVIS.
J. F. COTTRINGER.

Mr. Carnegie also read a letter from Mr. Frederick Billings on the part of the Pullman Palace Car Co. accepting the terms of our proposition and stating they were ready to formally execute the re-
quired papers. On motion of Mr. Bingham, seconded by
45*c* Mr. Young, the report of committee was approved of and committee continued, with the authority to complete the arrangements and perfect the lease to the Pullman Palace Car Co. on the basis of their report.

The secretary then read the following circular:

Report of Directors to Stockholders.

To the stockholders of the Central Transportation Company:

For various reasons it was deemed advisable that this company and the Pullman Palace Car Company should consolidate and thus terminate a conflict that was prejudicial to the interests of the stockholders of both companies and endangered the permanency of the sleeping-car business. The directors of both companies entertaining this view appointed committees to consider the subject and agree upon some plan for accomplishing the object sought. These committees had several meetings and agreed to consolidate upon an equitable basis, and, in order to arrive at this, each appointed a commissioner to fix the relative value of the property of each company.

Andrew Mehaffey, Esq., was appointed on our part and G. L. Dunlap, Esq., on behalf of the other party. These gentlemen had several meetings and examined thoroughly all the property and franchises—also the receipts and expenditures—of each company; but many difficulties were found in the way of consolidation, and it was agreed that the property of the Central Transportation Company should be leased to the Pullman Palace Car Company on the first of January, 1870. Should this meet your approval we
45*d* can secure from the Pullman Palace Car Company an amount equivalent to twelve per cent. per annum, guaranteed upon our present stock, payable quarterly, April, July, October, and January, and upon ten per cent. additional stock, which would be equal to an extra stock dividend of ten per cent.

We do not consider it necessary to add anything to this recital of facts to urge you to accept a proposition so favorable, as it must enhance the value of your property.

The details of the lease will be entrusted to a competent attorney and our interest fully guarded and protected there.

In order to consummate this at the time fixed (January the first) it is desirable that you should respond without delay to the secretary's circular, so that he may get the vote in as early as possible.

(Signed) O. W. CHILDS,
G. C. FRANCISCUS,
E. C. KNIGHT,
A. CARNEGIE,
G. R. DYKEMAN,
W. C. STEVENSON,
JAMES YOUNG,
JOHN BINGHAM,
Directors of the Central Transportation Company.

On motion of Mr. Carnegie, seconded by Mr. Knight, it was—

Resolved, That the secretary forward to each stockholder a copy of the circular of this board relative to the lease of the Pullman
45*e* Palace Car Company and request them to signify their approval of the same at as early a date as possible.

On motion of Mr. Franciscus, seconded by Mr. Carnegie—

Resolved, That the account of our general superintendent, Jonah Woodruff, Esq., this day presented, amounting to two thousand dollars, for extra services and expenses incurred by him, be, and the same hereby is, allowed, and that the treasurer is instructed to pay the sum, in addition to all former sums paid or authorized to be paid him on account of his salary and the moneys disbursed by him for the benefit of the company during the entire period of his services as superintendent and not heretofore paid.

Resolved, That the resignation of Jonah Woodruff as general superintendent of this company, and dated August the 17th, 1869, last, be, and the same is hereby, accepted, to take effect the first of January, 1870, and that for his devotion to the interests of this company, as evidenced by the developments during his administration as superintendent of this company, of convenience, taste, place, style, and finish and furniture of the cars, and the general increased comforts they have been made capable of affording, and for the fidelity as well as skill practiced by him in the discharge of the duties of his office, he is entitled to the thanks of this board; also that the secretary is instructed to transmit to him a copy of this resolution.

On motion of Mr. Franciscus, seconded by Mr. Carnegie—

45*f* Resolved, That, pending the negotiation of transfer of property to Pullman Palace Car Company, D. Torrey, Esq., is hereby appointed acting general superintendent of this company, to date from 1st of January, 1870.

On motion of A. Carnegie, seconded by Mr. Knight, it was—

Resolved, That the thanks of this board be tendered to Andrew Mehaffey, Esq., for his attention to the interests of this company in the negotiations (as commissioner on our part) with the Pullman Palace Car Company, and that the treasurer pay over to him two thousand five hundred dollars, with costs of his expenses, while engaged in the service of this company.

On motion of E. C. Knight, seconded by Mr. Dykeman, the board adjourned.

J. F. COTTRINGER, *Secretary.*

45*g* *Minute of Meeting of January 24th*, 1870.

A stated meeting of the directors of the Central Transportation Company was held this day, January the 24th, 1870.

Present: O. W. Childs, G. C. Franciscus, A. Carnegie, E. C. Knight, G. R. Dykeman, W. C. Stevenson, James Young, and John Bingham.

On motion of G. C. Franciscus, seconded by A. Carnegie, the reading of minutes of previous meeting were dispensed with.

The treasurer then read report of his account for the last nine months, ending December 31st, 1869, showing a balance in his hands at that date of $—.

On motion of Mr. Franciscus, seconded by Mr. Bingham, the treasurer's report was accepted.

The secretary reported that he had received from stockholders

their signatures authorizing directors to make a lease with Pullman's Palace Car Company as proposed to them in directors' circular of December the 24th, 1869, and that the number of shares voted was 36,380.

A. Carnegie (chairman of the committee on lease, appointed September the 16th, 1869) made a verbal report, stating that the committee had had prepared a lease with the Pullman's Palace Car Company, which he submitted in printed form.

Mr. Franciscus, seconded by Mr. Bingham, moved that the lease be considered by the board; whereupon Mr. W. J. Howard, our attorney-at-law, under whose immediate charge the lease was drawn, read it and explained its provisions.

On motion of Mr. Franciscus, seconded by Mr. Young, it was resolved—

45*h* That the lease, as read by Mr. Howard, to be made between this company and Pullman's Palace Car Company be, and is hereby, accepted by this board, and the president and secretary are hereby instructed to sign the same and affix*ed* the seal of the company thereto as soon as the necessary legislation is procured to execute the same on the part of this company.

On motion of Mr. Franciscus, seconded by Mr. Bingham, it was resolved—

That the treasurer give notice that the monthly payments heretofore ordered in anticipation of dividends will be discontinued, and that instead thereof quarterly payments on account of dividends will be paid, commencing in April next.

On motion of Mr. Franciscus, seconded by Mr. Knight, it was resolved—

That the board adjourn, to be convened at the call of the president.

(Signed) J. F. COTTRINGER, *Secretary.*

45*i* *Minute of Meeting of April 18th*, 1870.

A stated meeting of the directors of the Central Transportation Co. was held on Monday, 18th April, 1870.

Present: O. W. Childs, G. C. Franciscus, E. C. Knight, W. C. Stevenson, G. R. Dykeman.

The minutes of meeting of 11 Feb'y were read and approved of.

The president then presented and read the report of the executive committee as follows:

"The executive committee would respectfully submit to your board the following report, pursuant to the action before taken at your several meetings and the authority given by the stockholders, as expressed by them in their return, duly signed, of the paper inclosed to them in a circular of the secretary, under date of Jan'y 24th, 1869, together with a copy of your resolution of same date. The lease referred to in said circular, and upon the terms therein stated, has been fully executed and copies of the same have been duly exchanged on the 17th Feb'y last. The lease bears date Jan'y 1st, 1870. All subsequent accounts, however, and transactions of

the officers of the company have been for the lessee and with reference to the lease having taken effect on that day, but the cars and property of the company were not transferred until after the execution and transfer of the papers on the 17th Feb'y, as before stated. A copy of the lease is herewith presented, to which reference may be had for more full information of its details and knowledge of its value to this company.

45*k* The resolution of your board directing notice to be given of the change in the payments on account of dividends from monthly to quarterly was contained in a circular of the treasurer addressed to each stockholder on the 28th Jan'y, quarterly payments to this company by Pullman's Palace Car Company, as required by the terms of the lease, rendering this change necessary.

The first quarterly payment under the lease, viz., $66,000, was duly received, and three per cent., being at the rate of twelve per cent. per annum of the former capital, or $60,000, was forwarded *pro rata* to all of the stockholders on the 1st inst., leaving a balance in the hands of the treasurer of $6,000. It was deemed proper to retain this sum to meet existing obligations and to defray the future expenses of maintaining the organization of the company, as required by the terms of its charter.

The expenses incurred, exclusive of salaries, from Jan. 1st to date, for certificates, checks, and other stamps, for ledger, cash, stock certificates, and other books, and for stationery, for printing circulars, publishing notices of meeting, and for envelopes and other etc., amount, as per vouchers rendered, to $302.33. In view of the extra and severe labors of the treasurer during the last quarter and of his having received no compensation from this company for services rendered during that time, your committee recommends the passage by your board of a resolution authorizing the payment of the expenses incurred to date, as given above, and a payment of his usual salary for the same period.

45*l* A careful revision of the former estimate of all future contingent expenses of maintaining the organization, exclusive of salaries, makes the amount per annum $304.20, which, added to the amount of salaries as now authorized by your board, increases the expenses to $2,700, or 13½ one hundredths of one per cent. of the former capital, and reduces the amount for annual dividends from 13.20, the amount it would be without any expenses, to 13.06½ per cent. per annum of the capital of the company as it stood previous to the lease. The taxes to which the company is liable will add somewhat to this reduction of the sum for annual dividends. Although this precise amount cannot now be stated, it is well understood that it cannot, under existing legal rates of taxation, reduce the dividends, including all and every of the contingent or the other expenses below 12⅛ per cent. per annum of the capital previous to the addition, under the act authorizing it, of ten per cent. This increase of the dividends, which will probably range from ⅛ to ⅜ of one per cent. per annum beyond any heretofore made, when considered in connection with the perpetuity secured by the terms of the lease, cannot but be regarded as favorable to the conclusion and as justifying

the opinion that such increased value has been given to the stock of the company by the lease as should be very gratifying and quite satisfactory to every stockholder.

You will learn from the reading of the report of the treasurer, herewith presented, that the balance in the treasury March
45m 31, 1869, the close of the last fiscal year, was $55,533 21 1/
The gross receipts for earnings during the nine months ending Dec. 31, 1869, were 371,585 83 1/
And from avails of stock and all other sources 553,459 55 1/

Making a total of $980,578 59

And the payments during the same period were, for
running and contingent $95,328 94 1/
For repairs of cars 78,873 28 1/

Making total for running c., ent., & rep'r 174,202 22 1/
And that the am't paid for patent fees was $31,395 88 1/
And for dividends 150,297 00 1/ viz: 181,692 88 1/

Making total payments on acc. running dep't 355,895 10 1/
All other paym'ts for new cars, taxes, &c. 560,684 80 1/

Making total payments $916,579 90

Showing the amount in the treasury, Dec. 31, 1869, to have been $63,998.69, which sum was duly transferred to Pullman's Palace Car Co. as an offset to or in consideration of said Co. having assumed all of the debts and unliquidated claims against the Central Transportation Company arising from their construction of new cars or other causes, as required by the terms of the lease.

The surplus net earnings during the 9 months, after paying all expenses of the unusually large repairs and the dividends, was
45n $23,722.58, and with the additions made to the number of cars during the latter part of the last year and those to be added, with the money handed over by this company, including the advantages of the patents and contracts transferred and their contract, since renewed and extended, Pullman's Palace Car Co. are and will continue to be in possession of the means of fully and permanently complying with the terms of the lease, and that they and their successors will continue to do so for a long period to come your committee entertain no doubts. With full confidence, therefore, in the propriety of the lease and general satisfaction with its terms, your committee look forward with high expectations, and with as strong assurances as, in their opinion, under existing circumstances can be given, of realizing at least a fair, if not more than usual, remuneration for the money invested in the stock of the company.

By order of the executive committee.

(Signed) O. W. CHILDS, *Chairman.*

On motion of E. C. Knight, 2'd by G. R. Dykeman,'

Resolved, That the report of the executive committee just read be accepted, and that it be attached to and form part of the annual report required by the by-laws of the company from this board to the annual meeting of the stockholders.

The treasurer's report showing balance transferred to Pullman's Palace Car Co. 31 Dec., 1869, of $63,998.69—

On motion of Mr. Stevenson, 2'd by Mr. Knight, it was accepted.

On motion of Mr. Dykeman, 2'd by Mr. Franciscus, the board adjourned.

J. F. COTTINGER, *Secretary.*

45*o* (Objected to on the ground that the action of the stockholders was not taken at a corporate meeting.)

The COURT: This has reference to the original lease, and it is in that connection that I consider the objection. The minutes are admitted.

(Exception by defendant.)

Mr. Johnson also offers in evidence minutes of annual meeting of stockholders of 21st April, 1884, showing that they passed a resolution, of which the defendants were apprised prior to the making of the alleged modified lease, to the effect that the board of directors should negotiate a modification of the lease, which should be submitted to the stockholders for their approval.

(Objected to because, if tending to limit the power of the directors, it was beyond the power of the stockholders to do it, and, if it did not, it is immaterial and irrelevant. Objection overruled. Exception by defendant.)

Said minute was here read, and was in words and figures following:

"Resolved, That the board of directors be, and they are hereby, authorized to make any modifications to the existing lease with the Pullman's Palace Car Company if, in their judgment, modifications or changes are deemed necessary, and to submit their action in that behalf to the stockholders for their approval."

Mr. Johnson also offers in evidence minute — board of directors, showing their action with reference to the modified lease.

(Objected to unless accompanied with evidence tending to show that same was communicated to defendants.)

Mr. Johnson states that he will not press his offer.

JOHN C. BINGHAM, having been duly sworn, was examined as follows:

By Mr. JOHNSON:

Q. You were president of the Central Transportation Company during the year 1884, and in 1885, up to the time of the stockholders' annual meeting in 1885, were you not?

A. Yes, sir.

Q. During that time, as president of the company, you executed a modified lease to the Pullman Palace Car Company?

A. Yes, sir.

Q. Please tell me when that lease was delivered who was present.

A. Mr. Pullman, Mr. John C. Bullitt, Mr. Atterbury, I think. Mr. Cottringer, William S. Lane, and myself.

Q. Please state what took place at that time with reference to the delivery and whether it was complete or not; state the circumstances of the delivery.

A. We met by appointment at the Continental Hotel about ten o'clock, I think, on Saturday, February 28th. Mr. Bullitt and Mr. Pullman were already there. Mr. Lane and I came in. The lease was lying on the table. Mr. Lane read it. I did not read it. He approached Mr. Bullitt and he said, "I see nothing in here about the approval of the stockholders."

Q. Who said that?

A. Mr. Lane. Mr. Lane was the attorney of the Central Transportation Company. He was president of the Pullman committee and one of the directors. He said to Mr. Bullitt, "There is nothing in this lease about the approval of the stockholders."

By the COURT:

Q. That is, in the modified lease?

46 A. Yes, sir; in what we called the modified lease. Mr. Bullitt's reply was, "No." Mr. Lane said, "I'll introduce it," and he approached the table—a short, small table—when Mr. Pullman said, "No; that's not necessary to do that; don't spoil it; I'll take the chance of the stockholders approving that;" and I think he added that "If they're sensible people, of course, they'll approve it." I said to Mr. Lane that I thought perhaps we were not doing exactly the thing; that it was rather putting the cart before the horse to sign this prior to the approval of the stockholders, and he answered me somewhat impatiently that this was the way it had to be done. Of course, I said no more in reference to signing it.

Q. You speak there as if Mr. Pullman knew that some approval of the stockholders would be necessary; on what do you base that?

A. I understood him to mean that—of course—that he was to have the approval.

(Objected to.)

Mr. BULLITT: State what he said.

A. Well, that's what he said.

By Mr. JOHNSON:

Q. At the prior negotiations and interviews had anything been said to him about the approval of the stockholders being necessary?

A. Certainly; I think at all our meetings with Mr. Pullman that resolution of the stockholders had been mentioned and spoken of frequently—the resolution of 1884.

Q. The one that was read here?

A. Yes, sir.

Q. Did you or any one of your board of directors at any time speak to him about what you were doing being necessarily approved by the stockholders or not?

A. We always spoke to him in that way; there didn't seem to be any question about it.

Q. About what?

A. About the approval of the stockholders being necessary to fix it.

Q. You say that he was aware of the fact that there had been this resolution of the stockholders passed?

A. Certainly he was aware of it.

Cross-examination by Mr. BULLITT:

Q. How long had you been in negotiation with Mr. Pullman about this matter?

A. I think it must have extended over a year or more.

Q. Didn't it begin in the summer or fall of 1883?

A. I don't remember it then. My first recollection of it was in May, 1884, I think.

Q. Your memory does not go back to July or August, 1883?

A. No, sir; I don't remember it. Perhaps some circumstances mentioned might bring to mind the connection, but there were so many meetings that I couldn't fix them by their dates, except this very important one.

Q. How many meetings, according to your best recollection, do you remember or recall?

47 A. Well, a dozen, I should say.

Q. Weren't there more than thirty?

A. Likely.

Q. Do you or not recall the fact that Mr. Pullman was over here during the year 1884 and the beginning of 1885—up to the time of which you have spoken—twenty or thirty or more times?

A. No, sir; I don't remember that.

Q. You do remember that there were quite a number of interviews about it?

A. I remember a large number of meetings, but I think they were in 1885.

Q. Do you recollect that this lease was closed the latter part of February, 1885?

A. Yes; that is true. I mean the latter part of 1884—October.

Q. Then you mean to say that the meetings did take place in 1884 as well as 1885?

A. Yes, sir.

Q. They continued down to the time of which you have spoken?

A. Yes, sir.

Q. Beginning about how far back?

A. I think the first meeting was in May.

Q. Of 1884?

A. May of 1884; yes, sir. I will get the figures right after awhile.

Q. Those interviews lasted on an average from one to three or four hours, didn't they?

A. Yes, sir.

Q. During those interviews did or did not Mr. Pullman state to you and the other members of your board the difficulties in which the subject was placed by the refusal of the Pennsylvania Railroad Company to renew the contract which was to expire on the 27th of January, 1885?

A. Yes, sir; he did state that.

Q. Did he not state to you in these interviews—one or more of them—that the Pennsylvania railroad refused to renew the contract upon any terms more favorable to the Pullman company than, say, six per cent. per annum upon the cost of the stock invested?

A. Yes, sir; I think he said so.

Q. That they said that they would not allow him to make more than six per cent. per annum upon the capital because they could stock the road with sleeping cars by a car trust at five per cent. per annum?

A. Yes, sir; he said so.

Q. Didn't he go over the ground fully and elaborately as to the difficulties that would grow out of the fact that the Pennsylvania road would not renew the contract—that is, the effect upon the Central Transportation Company, as well as the Pullman company, if they refused to renew the contract?

A. Yes, sir; he did.

Q. Didn't he show you the terms and the best terms that he could make or explain to you the best terms that he could make with the Pennsylvania railroad?

A. Yes, sir; he said so.

48 Q. Did he not solicit you and other members of your board to aid him in trying to get the Pennsylvania railroad to make a more favorable contract?

A. He said that he would like such a thing; yes, sir.

Q. Did he not state that the matter must be concluded between the Central Company and the Pullman Company before the meeting of the stockholders of the Pennsylvania Company in 1885?

A. I think he did; yes, sir.

Q. Did he not say to you that Mr. Roberts said that unless the matter was concluded with the Pennsylvania railroad before he finished his annual report for the year 1885 that he, Mr. Roberts, was apprehensive that there might be difficulty in getting the stockholders of the Pennsylvania railroad even to approve of the contract?

A. No, sir; I don't remember his saying that.

Q. Nothing of that sort?

A. No, sir.

Q. Do you not recollect that when the question was raised on that morning as to the words of the resolution going into the agreement that Mr. Pullman stated that he could not consent that those words should be introduced into the agreement?

A. No, sir; I don't remember that.

Q. Don't you recollect that he stated positively that he could not accept that contract in any other way than an absolute contract?

A. No, sir.

Q. Wait one minute. Because he would not conclude his arrangement with the Pennsylvania railroad until that contract was definitely settled?

A. No; I don't remember his saying that.

Q. Don't you recollect that? I want to recall your memory as to the place where he sat.

A. You were there and you know all about it.

Q. Yes; I was, and I know all about it. Don't you recollect that it was room No. 20 of the Continental Hotel?

A. Yes, sir.

Q. Do you recollect that Mr. Pullman was on the west side of the fire-place?

A. Yes, sir.

Q. Do you remember his getting up when that proposition was made and stating that he would not undertake to make or to close the arrangement with the Pennsylvania Railroad Company until he had the contract closed with the Central Transportation Company?

A. No, sir; I don't remember that.

Q. You don't recollect that?

A. No, sir.

Q. Don't you recollect that when that suggestion was made Mr. Lane turned to me and said he would like to know what I thought about its going into the contract?

A. No; he didn't say that.

Q. Didn't he say anything of that sort?

A. No, sir.

Q. Did he call my attention to it?

A. Yes, sir.

49 Q. Don't you recollect that at that stage Mr. Pullman stated positively and distinctly that he was advised that the board of managers had the power to execute the contract, and that he would accept it executed by the board of managers?

A. No, sir; he didn't say that.

Q. You don't remember anything of that sort?

A. No, sir.

Q. You don't recollect that he said that he could not undertake the contract with the Pennsylvania railroad until your contract was concluded, and he must report it to Mr. Roberts, so that he, Mr. Roberts, could put it in his report?

A. No, sir.

Q. Nothing of that sort?

A. No, sir; do you mean that morning?

Q. Yes; I mean that morning. Do you remember nothing of that?

A. No, sir.

Q. Do you remember in the course of the negotiations that your

board made an offer at one time to settle with Mr. Pullman at a rental of $144,000 per year?

A. Yes, sir.

Q. That was about what time?

A. I think that was about the beginning of the negotiations, in October.

Q. In May, 1884?

A. No, sir; October; about October, I think.

Q. Of what year?

A. 1884. I think I can tell you the offer. It was $132,000 and $12,000 for expenses, making $144,000—six per cent. on the capital stock.

Q. With Mr. Johnson's permission, I will say that there is a minute to that effect made on the 5th of May, 1884. You have said that you thought it was October, 1884.

A. I don't think it was offered to Mr. Pullman until the fall.

Q. You think it was considered by yourselves in May, but not offered to him until the fall?

A. I think so; yes, sir. I may be somewhat confused in those dates, because there was a great deal done in a long space of time.

Q. You first offered to adjust the matter at $144,000?

A. Yes, sir.

Q. What was the next offer you made?

A. I think we finally got down to five per cent.

Q. Wasn't the next offer $110,000?

A. $120,000; $110,000 for rental and $10,000 for expenses.

Q. Didn't you subsequently get down to $84,000?

A. No; I think not.

Q. You subsequently did get down to $66,000?

A. Yes, sir.

Mr. JOHNSON: He forced them down.

The WITNESS: Well, we did get down to that; we agreed to accept that, and offered it to our stockholders.

By Mr. BULLITT:

Q. Don't you recollect that on that morning Mr. Pullman went over more or less the ground that he had gone over pre-
50 viously about the burdensome character of this contract with the Pennsylvania railroad?

A. Not that morning.

Q. Was there nothing said about it?

A. Not to my recollection.

Q. Didn't he refer to it?

A. He may have incidentally referred to it. There was no enlargement on the subject.

Q. You mean that he didn't talk an hour about it?

A. I mean that he didn't talk fifteen or twenty minutes about it.

Q. Didn't he in that conversation say anything about the necessity of reporting to the Pennsylvania railroad that he had concluded the arrangement with the Central Company?

A. I think not.

Q. Nothing whatever?
A. I don't remember his saying anything of the kind.
Q. Had he said anything about it previously?
A. Yes, sir; he had previously.
Q. What?
A. That it was necessary for him to make the contract with the Central before he could conclude with the Pennsylvania railroad.
Q. How often had he said that?
A. I suppose half a dozen times or more.
Q. Hadn't he said previously that he would not conclude the arrangement with the Pennsylvania railroad until he had arrangements closed with the Central Company?
A. I don't remember his saying it in that way.
Q. How did he say it?
A. That it was necessary for him to do so.
Q. Did he say why it was necessary.
A. Because he wanted the arrangements made. He could not make his arrangement with the Pennsylvania railroad until he made it with the Central Transportation Company.
Q. Why did he say that he could not do it?
A. He seemed to think it was necessary on account of the terms.
Q. Didn't he state that it was on account of the terms?
A. I think he did; yes.
Q. What were the terms which he said were such as would prevent him from concluding arrangements with the Pennsylvania railroad until he had made arrangements with you?
A. He didn't say. I don't think he said anything about terms, but he said the terms of the Pennsylvania railroad were very hard.
Q. He had told you what the terms were?
A. Yes, sir.
Q. Had he shown you what amount that contract would realize?
A. Yes, sir.
Q. How much did it show that he realized?
A. I think about $600 a car.
Q. How much would that amount to?
A. We figured it on our ninety cars $54,000.
Q. And he agreed to pay you $66,000?
A. Yes, sir.
51 Q. Did he not say that he was paying you from $10,000 to $12,000 more than he would get out of it?
A. We so understood—that he was paying on old cars at Altoona that much for them.
Q. Did he not show you that he was paying from $10,000 to $12,000 to you more than he would realize, allowing him no interest whatever on capital invested?
The COURT: Are we not getting beyond the question?
Mr. BULLITT: I want to see if I cannot refresh his memory upon this other point.
The COURT: If that is the object you may go on.
Mr. BULLITT: That is the whole object of it. (To the witness:)

Don't you recollect that you had the figures which Mr. Goodman gave you at that meeting?

A. Yes, sir.

Q. When was it that those figures were given by Mr. Goodman showing what the cars would produce under the arrangement with the Pennsylvania railroad?

A. I don't remember.

Q. Did you not get them the night before this arrangement was concluded?

A. I can't remember when; I know it was before.

Q. Did not the figures of Mr. Goodman about correspond with those which you yourself had?

A. We didn't have any figures.

Q. You got them from him, did you?

A. Yes, sir.

Q. Did not Mr. Pullman, both before that meeting when that paper was executed and again on that morning, referring to the hard terms of this contract with the Pennsylvania railroad, say that he could not conclude arrangements with the Pennsylvania railroad until he had his arrangements definitely and finally settled with your company, or words to that effect?

A. Not on that morning.

Q. What did he say?

A. I don't remember his saying anything about it on that morning.

Q. You do remember that he had said it before?

A. Yes, sir; I think he did.

Q. Please state as nearly as you can just what he did say on this subject about not being willing to close with the Pennsylvania railroad until he had concluded his arrangements with your company.

A. I have already answered that question; that's about what he said.

Q. Do you recollect his saying that he must be released from the payment of the large sum of money—$264,000—before he could conclude his arrangements?

A. No; I don't remember that.

Q. Or before he could accept the new terms of the Pennsylvania railroad?

A. No; I don't remember that.

Redirect examination by Mr. JOHNSON:

Q. You have been asked a great deal about what Mr. Pullman said as to what he made out of this thing. Did he at any
52 time show you any original books or papers showing what he made out of it?

A. No, sir.

Q. Did you at any time, at the time of the execution and delivery of this paper or before, say to Mr. Pullman, in substance or in form, that your directors had authority or professed authority to bind the company until the stockholders had approved?

(Objected to.)

By the COURT:

Q. What, if anything, was said on that subject?

By Mr. JOHNSON:

Q. State what was said on the subject of the authority of the board of directors to execute a binding agreement without the approval of the stockholders.

The WITNESS: The board of directors never entertained the thought at all.

The COURT: What was said about it?

The WITNESS: At what time?

Mr. JOHNSON: At any time. Did they say to him that they had authority to act without the approval of the stockholders?

(Objected to.)

The COURT: What was said on that subject in any of the interviews that you have referred to?

Mr. JOHNSON: Of their power to bind the company without the approval of the stockholders?

The COURT: Without the approval of the board?

The WITNESS: They didn't think they had the power. They said they hadn't the power. They said it to Mr. Pullman time and time again. The resolution was brought up nearly at every meeting—that the stockholders certainly must approve of anything that we did before it was binding. Mr. Pullman was perfectly aware of it.

Recross-examination by Mr. BULLITT:

Q. Will you state the first time that was said in point of date, where, and to whom?

A. I can't do it.

Q. Will you state the second time?

A. No, sir; I can't give date for it at any time, but I am satisfied——

Q. Never mind what you are satisfied of. Please state the fact.

A. I am satisfied that it was spoken of, referred to and mentioned at, I think, nearly every meeting that we had.

Q. By whom and to whom?

A. To Mr. Pullman, by the different members of the board — of the committee.

Q. Name any director who mentioned it, who ever said that to Mr. Pullman in your presence.

A. I will say Mr. Lane.

Q. When?

A. At a meeting in the Continental Hotel.

Q. When?

A. The date I cannot give you. Some time during those negotiations.

53 Q. Do you remember what Mr. Lane said?

A. That's what he said. That we could do nothing without the approval of the stockholders.

Q. You don't recollect when that was said?

A. I can't give you the date; no, sir.
Q. Was it said on the morning that this paper was executed?
A. I think not.
Q. Was it said the day before?
A. I think it is likely. Have you reference to the meeting of the directors?
Q. I mean the meeting with Mr. Pullman.
A. The directors held a meeting the afternoon previous to the signing of this paper. That resolution was spoken of there among the directors.
Q. But who said that that paper could not be executed and delivered without the authority of the stockholders?
A. Mr. John A. Wright said so. Lane said so.
Q. When—the day before?
A. Yes, sir.
Q. Was Mr. Pullman present at that meeting?
A. Yes, sir; at a portion of it; yes, sir.
Q. Was he present when anything of that sort was said?
A. I think not.

Mr. BULLITT: Then I ask to have that stricken out.

Mr. JOHNSON: Who was present at that meeting?
A. Mr. Pullman wasn't present all the time during that meeting. There was a meeting of the board of directors held the Friday afternoon previous—the Central Transportation board.
The COURT: You say Mr. Pullman was not there when that was said?
A. No, sir; he was not.
Q. Who was there beyond the board?
A. Nobody but the board.
Q. Nobody but the board?
A. No, sir.
Q. Mr. Pullman was not there when that was said?
A. No, sir.

The COURT: Then it must be taken in that connection. What was said in Mr. Pullman's absence is not evidence.

By Mr. JOHNSON:

Q. Was Mr. Pullman present at any of the times when it was said?
A. Yes, sir.

MATTHEW BROOKS, having been duly sworn, was examined as follows:

By Mr. JOHNSON:

Q. You were one of the board of directors elected to the Central Transportation Company in April, 1885, were you not?
A. Yes, sir.
Q. You had several interviews in connection with your board with Mr. Pullman afterwards?

A. Yes, sir; two or three.

Q. Do you remember any interview at the Continental Hotel in which reference was made to the execution of this alleged
54 modified lease, and what Mr. Pullman stated about it?

A. Yes, sir; I think I do.

Q. State to the jury what it was.

A. I was present at the Continental Hotel at the time Mr. Stevens had interviews with Mr. Pullman. I was there by request. I remember the remark that Mr. Stevens made distinctly to Mr. Pullman in reference to this modified lease, and Mr. Pullman's reply to Mr. Stevens on that occasion was that he didn't propose giving him his line of defense. I heard him say that. At one other interview Mr. Pullman met us in the board room on Chestnut street, though I forget the number, 1702 I think it was—it was when the most of the directors were present. I was there as one. Mr. Stevens asked Mr. Pullman whether he considered this lease binding. He said he took the chances of that. I remember his saying that distinctly, but at the Continental Hotel he altered it a little, and said that he wasn't willing to give Mr. Stevens his line of defense.

Cross-examination by Mr. BULLITT:

Q. Do you remember what Mr. Pullman said in the interview in the Continental Hotel, if anything, about the terms of the proposed arrangement with the Pennsylvania railroad?

A. I suppose I was there at least two hours, and he said a great deal, but it would be impossible for me to repeat it.

Q. I do not ask you to repeat it all. Do you remember the fact that in that interview he said anything about the terms he could make or had made with the Pennsylvania railroad?

A. I couldn't say that I could remember any particular thing that he did say.

Q. Then how is it that you happen to remember the one particular thing that he said, that he wouldn't give Mr. Stevens his line of defense?

A. From the fact of sitting there next to Mr. Stevens.

Q. That is all that you remember?

A. No; I could tell you other things if you want to hear them.

Q. I thought you said a moment ago that you couldn't remember?

A. I can't give you the conversation for the two hours.

Q. State whether you remember or not his saying anything about the negotiations that he had had with the Pennsylvania railroad.

A. Yes, sir; I think he talked that this modified lease was about the best thing that he could afford to do. I think that would wind the whole thing up.

Q. That this modified lease was about the best thing he could afford to do?

A. Yes, sir; for the Central Transportation Company.

Q. Why?

55 A. I left before Mr. Stevens and Mr. Pullman, and as I was going to leave he stepped up to me and said, "Mr. Brooks, I

hope this interview has been a satisfactory one." If you wish to know what I said to him I will tell you. I remember that distinctly.

Q. I have no objections to your stating it, if you wish to.

A. I said, "Mr. Pullman, I have had two or three interviews, and you have talked exactly the same way every time."

The COURT: What did he say and what did you reply?

A. He asked me if this conversation this evening was satisfactory. I said, "Mr. Pullman, I have heard you two or three times; I don't think you have varied any"—what I mean by that varied but very few words—the same tale told the three times in reference to the Central Transportation and the Pennsylvania railroad—"and I wish to say to you before I leave it is very unsatisfactory to me."

By Mr. BULLITT:

Q. Please remember, if you can, whether Mr. Pullman stated why it was that he was not willing to conclude his arrangements with the Pennsylvania railroad until he had concluded an arrangement with the Central Transportation Company.

A. I can't remember hearing him say anything special upon that subject.

Q. You don't recollect anything about it?

A. Only in saying that that was the best—when he said that it was the best that he could afford it included, I presume, what he was going to make; it included what rental he was going to receive from the Pennsylvania railroad. That was my idea—that that was the best bargain he could afford to make with the Central Transportation Company.

The COURT: I do not think you understood Mr. Bullitt.

(Mr. Bullitt's question was here repeated to the witness.)

The WITNESS: I can't remember anything said about that.

By Mr. BULLITT:

Q. Do you remember his saying anything about the fact that he could not afford to let the rental of $264,000 a year run on in favor of the Central Transportation Company, unless he could get a favorable contract with the Pennsylvania railroad; and as he could not, therefore he could not afford to make an arrangement with the Pennsylvania railroad until he had made arrangements with your company?

A. At the interview—several interviews that I had—I can't remember that he said anything of that kind; he might, but I don't remember it.

Redirect examination by Mr. JOHNSON:

Q. The object of these interviews was to see if you could arrange some settlement; did you succeed?

A. No, sir.

Q. Mr. Bullitt has asked you whether you did not say so and so;

do you remember whether or not any information or material was asked from him?

A. Yes, sir.

Q. Do you remember or not whether you got it?

56 A. I know that he had a bundle of papers and said that that was answers to the questions that had been propounded by the president and board of directors of the Central Transportation Company, and our president, Mr. Stevens, said that he thought he was going to take them; they were handed to him, but Mr. Pullman says, "You can't have them;" but the next day he agreed to have those papers read—wouldn't allow them to go out of his hands—to the directors of the Central Transportation, and I think they refused to hear them.

By Mr. BULLITT:

Q. Did Mr. Pullman give any reason why he was not willing to let those papers go out of his hands?

A. Yes, sir; I think the reason he gave was that it would expose his business to the public gaze. That did not seem to be very satisfactory.

Q. Did he not state that it related to other business matters, and while he was willing that you should see them he was not willing that they should in any way get out to the public?

A. He might have said that, but I don't remember it.

Q. You don't remember that he used that language?

A. No, sir; I don't remember his using that language.

Q. Did he not afterwards send them to a meeting of the board of managers by one of his officers?

A. Yes, sir; I believe he did.

By Mr. JOHNSON:

Q. The information, then, that he offered you was in such a way that you could not communicate it to your stockholders, was it?

A. Yes, sir.

Mr. BINGHAM, having been recalled, was further cross-examined by Mr. DICKSON:

Q. Is there any minute of the company showing a formal meeting of the stockholders of the company ratifying or authorizing the lease of 1870?

A. I think not, although I was not connected with the company at the time.

Q. So far as you know there was not?

A. I think there was no meeting. It was done by circular.

Mr. DICKSON: I ask that it be noted that the testimony of all the witnesses called by the plaintiff is taken subject to the same objection as made to the testimony of Mr. Stevens.

The COURT: This testimony goes in under the offer made by Mr. Johnson, and under the objection, and it is just the kind of testimony that the court contemplated—testimony concerning the circumstances under which the paper was handed over.

BENJAMIN P. OBDYKE, having been duly sworn, was examined as follows:

By Mr. JOHNSON:

Q. You were present at a meeting at the Continental Hotel, where the subject of the alleged modification of the lease was spoken of; did you hear the whole of the conversation between Mr. Stevens and Mr. Pullman?

A. Not the whole of it.

57 Q. Why not?

A. From the fact that I sat on the opposite side of the room and Mr. Pullman and Mr. Stevens sat on the east side of the room; I sat on the west. It was impossible to catch every word of the conversation.

Q. State what you did hear of it.

A. There was considerable said that evening. Mr. Pullman spoke about the town of Pullman and different subjects. I remember hearing him say that he would take his chances on the lease—on the modified lease.

By the COURT:

Q. That was the occasion when the paper was on the table, was it?

A. I don't remember the paper being on the table.

Mr. JOHNSON: This was after the execution; this is the secretary of the new board.

The COURT: This is the conversation spoken of by Mr. Stevens?

Mr. JOHNSON: Yes, sir. (To the witness:) You say you remember hearing Mr. Pullman say that he would take his chances?

A. Yes, sir.

Cross-examination by Mr. BULLITT:

Q. Do you recollect that that was preceded by any conversation on the part of Mr. Pullman as to the negotiations that he had had with the Pennsylvania Railroad Company and with the directors of the Central Transportation Company?

A. I could only catch an occasional word, as I said.

Q. You did not hear that?

A. I did not hear that.

Q. Did you hear anything about it?

A. I think there was something said about the Pennsylvania railroad contract.

Q. Do you remember what was said?

A. I do not, for the reasons I have stated.

Q. All you do remember is just what you have stated—that Mr. Pullman said he would take the risk of that?

A. I testified that the matter was referred to, but I did not hear the conversation, for the reason I have stated—being on the opposite side of the room.

By the COURT:

Q. Is your hearing a little difficult?

A. It is in one ear.

(Mr. Johnson offers in evidence minutes of stockholders' meeting called in pursuance of resolution of board of directors for the purpose of approving or rejecting the alleged modified lease—offered merely for the purpose of showing the fact of a rejection by the stockholders of that agreement.

Objected to by defendants as irrelevant and upon the ground that the stockholders could not control the action of the board.)

The COURT: I will admit it as being part of the transaction, and for whatever light it may shed, first, upon the truth of your
57½ allegations respecting the circumstances under which this paper was made, and, in addition, to show that it was submitted and was not approved.

Mr. JOHNSON: That is all I want to offer it for.

The resolution read was in the words and figures following:

Mr. W. S. Lane moved "that the stockholders now proceed to a stock vote upon the approval or disapproval of the modification of the lease;" which was seconded.

Mr. Louis Wagner moved "that the modified lease be now read;" which, being seconded and carried, it was read.

Question on the motion being called for, the chairman announced as the tellers Messrs. Frank Weckerly, Wm. H. Brooks, and Theodore H. Ward, who were duly sworn.

After sufficient time had been allowed for the deposit of ballots the polls, on motion, were closed.

The tellers reported the following as the result of the vote on the modification of the lease:

PHILADELPHIA, *April 20th*, 1885.

We, the undersigned, tellers of the election of the Central Transportation Co., held at Association Hall on this date, hereby certify that the vote upon the question of the ratification of the lease to the Pullman Palace Car Co. was as follows:

There was voted 28,082 shares (twenty-eight thousand and eighty-two shares), 2,055 in favor of the lease (two thousand and fifty-five shares) and 26,027 shares against the lease (twenty-six thousand and twenty-seven), a majority of 23,972 shares against the lease.

F. WECKERLY.
THEO. H. WARD.
WM. H. BROOKS.

And their report is attached hereto as a part of these minutes.

58 (Mr. Dickson, of defendant's counsel, moves to strike out the original lease, it appearing that it was not ratified nor authorized by any formal meeting of the stockholders of the company.

The court refuses the motion, in view of the situation of the case and what has been developed.

Exception by defendant.)

Plaintiff closes.

Afternoon Session.

GEORGE M. PULLMAN, having been duly sworn, was examined for the defendant as follows:

By Mr. BULLITT:

Q. Where do you reside?
A. In Chicago.
Q. What is your business?
A. I am president of the Pullman Palace Car Company.
Q. How long have you been president of that company?
A. Since its organization, in 1867, nineteen years.
Q. What is the business of that company?
A. Its business is to manufacture and operate cars—sleeping and other cars.
Q. What kind of cars?
A. Sleeping and other cars; sleeping and parlor cars.
Q. Very largely sleeping cars, is it not?
A. Yes, sir; that is the main business.
Q. You were then president of the Pullman Palace Car Company at the time the contract was made with the Central Transportation Company in the month of February, 1870?
A. I was.
Q. Who negotiated that contract on behalf of the Pullman Palace Car Company?
A. I did.
Q. Who executed it?
A. I executed it on behalf of the Pullman Palace Car Company.
Q. How many sleeping cars did you receive from that company?
A. One hundred and nineteen cars altogether.
Q. How many contracts?
A. I think about sixteen. I am not quite clear about the number.
Q. Those contracts were with railroad companies for running sleeping cars over various railroads?
A. Yes, sir.
Q. The amount you undertook to pay by that contract was twelve per cent. upon the capital stock of the Central Transportation Company, which was $2,200,000?
A. Yes, sir.
Q. Or at the rate of $264,000 a year?
59 A. That was the amount we agreed to pay, because that was the amount of the net revenue as shown by the books of that company at that time.
Q. That was the amount of the net revenue as shown by their books at that time as being derived from their business?
A. Being derived from their business. They then had contracts with these roads. I do not remember now the exact number, but the main road—the main or most important—was the Pennsylvania. The net revenue that was divided among the stockholders, however,

was the entire amount received after paying the ordinary operating expenses of the company, and there was no fund retained for the necessary renewals and improvements of the cars.

Q. That was prior to the time at which your contract was made?

A. That was the revenue that they reported to me as the net revenue over and above the ordinary operating expenses.

Q. Down to what date did you pay that rent of $264,000 a year?

A. As long as the contract with the Pennsylvania railroad existed—I think January 27th, 1885. I think that is my recollection of it.

Q. Have any of the railroads which were named in that original lease, and for which the Central Transportation Company had contracts, fallen in by lapse of time?

A. By the expiry of the contracts they have—all of them.

Q. All of them fallen in?

A. All of them that were on the contract at that time that I recall.

Q. How many of them were you able to renew or make new contracts with?

A. I made contracts with the Baltimore and Ohio railroad soon after effecting this lease in substitution of the contract which then existed with the Central Transportation Company, but not on as favorable terms as the contract that the Central Transportation Company had with the Baltimore and Ohio railroad. I was obliged to throw away all the Central Transportation cars. Mr. Garrett would not allow any of them to be operated.

The COURT: I do not see what this has to do with the matter.

Mr. BULLITT: It is to support the last branch.

The COURT: It is for the purpose of supporting the last branch of the defense opened by Mr. Dickson, to wit, that you have a right to ask that the plaintiff shall be satisfied with a verdict here for such a sum as is equal to the net profits of the road?

Mr. BULLITT: That is it.

Mr. JOHNSON: As Mr. Bullitt defines the reason, I object to it as irrelevant to any issue raised in these pleadings. That is the first objection. My second objection is this: The clause is one that your honor is familiar with (reading same). Now, they have not averred that there was an election by them or form of an election to abide by that.

Mr. BULLITT: In the agreement which has been referred to, and which is now in evidence in this cause, there are found certain recitations (reading same). I suppose this is as clear a recognition of the purpose of the company to avail itself of the option to pay what was an agreed net revenue as any language could be. It seems to me, in view of those recitations in that contract, that it is an entire answer to the objection which is being made on the score that they have not exercised their option.

60

(Objection sustained. Exception by defendant.)

Mr. DICKSON: Do you waive your objection in regard to the plea?

Mr. JOHNSON: No.

Mr. BULLITT: The defendant further offers to prove that, by reason of the refusal of the railroad companies mentioned in the assigned contracts to permit the cars of the defendant to run over their respective lines of road, the profits, income, and revenue derived from and under the only other and remaining railroad company mentioned in the assigned contracts have fallen below the sum of $264,000, and the entire net revenue from the said remaining line of road is less than the sum of $66,000 per annum, and the defendant gave notice of its intention to declare the contract null and void and to surrender the demised property unless the rentals should be reduced to a sum not more than $66,000, and of its election to pay such net revenue in lieu of the original rental.

By Mr. JOHNSON: I have no objection to that.

The COURT: The court will first require evidence of the election. If you choose you can put in writing a statement of what you rely upon to prove the option, and the court will rule whether it is competent evidence to prove it or not.

Mr. BULLITT: Perhaps it will save time for the present to waive this point and go on upon another point, and we will be prepared in the morning probably to put it in a shape where it can be dealt with a little more intelligibly than it can now.

By Mr. BULLITT:

Q. We will leave for the present this question of the revenues, or at least everything preliminary to the interviews that were held with the directors of the Central Transportation Company. We will come directly down to that. At what time was the contract with the Pennsylvania Railroad Company to end? I think you stated the 27th of January, 1885.

A. I think I did.

Q. How soon did you commence your negotiations with the directors and officers of the Central Transportation Company in reference to the matter of the falling in of that contract with the Pennsylvania railroad?

A. My recollection is that I first spoke to one of the officers of that company perhaps two and a half years or three before that time, my attention having been called to it by Mr. Cassatt, the vice-president.

Q. Who was the person to whom you mentioned it?

A. Mr. Cottringer.

Q. What office did he hold in the Central Transportation Company?

A. Treasurer, I think—secretary and treasurer.

Q. When next did you have any interviews with any of them?

A. I should say in the latter part of the year 1883.

Q. Who, then, did you see?

61 A. I would be unable to state definitely. I saw, I should think, two or three or perhaps four of the directors.

Q. Who were they? Just give their names.

A. I saw Mr. Wolverton, Mr. Lane, and Mr. Bingham. I think I saw Mr. Wright.

Q. John A. Wright?

A. I saw Mr. Wright. I do not know that it was in the latter part of 1883. I couldn't tell that.

Q. How often—say between the 1st of July, 1883, down to the 28th of February, 1885—did you come to Philadelphia for the purpose of seeing the directors and officers of the Central Transportation Company on this business?

A. Oh, I should say from twenty-five to thirty-five times probably.

Q. Have you had the register of the Continental searched to see how often you could find you had been there?

A. Yes, sir.

Q. How often?

A. Well, I think that shows about twenty-five or thirty times. I do not remember. It is not less than that.

Q. What of the directors of the Central Transportation Company did you usually hold your interviews with when you came on?

A. I think the committee called the Pullman committee, as it was known to me, composed of Mr. John A. Wright, Mr. Lane, Mr. Howard, Mr. Bingham, I think, and Mr. Wolverton. That is my best recollection. I may not state all, and possibly I may be mistaken as to the names of some that I mentioned.

Q. At those interviews what was the specific subject of discussion between you and them?

A. I commenced by explaining to the committee the situation, as I understood it, with regard to our future relations to the railroad committee.

Q. To the Pennsylvania railroad?

A. The Pennsylvania Railroad Company. I advised them that Mr. Cassatt had notified me or stated to me, rather, in his office, that it was the intention of the Pennsylvania railroad at the expiration of the present contract to operate its own sleeping cars; that they should not renew the contract with this company. That was some two years and a half, perhaps, or three years.

Q. Would not renew this contract that lapsed on the 27th of January, 1885?

A. Yes, sir; the contract which lapsed at that time; one of the contracts which lapsed; and later I stated to them that Mr. Roberts—after having taken pains to ascertain, after having gotten reports from the principal officers of his road as to the advisability of renewing the contract or operating sleeping cars on their own account—had consented to a negotiation with me, at which he stated that it was simply a question whether the road would operate its own cars or recontract with the Pullman Company; that there was no question of any other new company coming between us, and, as to that, that it was a question of dollars and cents; that he could find the money on a five per cent. car trust and build their own sleeping cars, have the advantage of building new and improved cars, and that in any event, whatever they might do about sleeping cars,
62 the road had fully decided to operate its own parlor cars. It stated these facts to this committee, and I explained to them

at the same time that under the existing contract, the then existing contract, the railroad company was paying the Pullman Company about $400,000 per annum mileage, or the amount that it was assumed to cost to maintain the bodies and trucks of the cars, as the original contract made fifteen years ago provided that the railroad should do; that I was pretty well satisfied that Mr. Roberts would not make a new contract and pay any mileage; that therefore the net revenue resulting to the Pullman Company under any new contract that could be made probably would be decreased by at least that amount, and therefore it was apparent to everybody that we could not make any contract or consent to continue on the lines of the Pennsylvania railroad with the then existing lease between the Pullman Company and the Central Transportation Company. I was asked, I remember, by Mr. Howard, and I happen to remember his speaking particularly, perhaps, because he was not connected with the Pensylvania railroad, to go on and get the best I could: "Go on and get the best contract out of George Roberts you can, and we will help you all we can." And as I made further progress—I would explain that I came here often, upon appointments with Mr. Roberts, to negotiate with him, and at the same time I made appointments with the committee of the Central Transportation Company so that I could report progress and advise with them, and I devoted a great deal of time towards the latter part of 1884—I find by the hotel register that I was here two or three times a week, sometimes stayed here two days—and at all those times, or nearly all those times, I had joint engagements with the Central Transportation Company and with Mr. Roberts. We began finally at a number of interviews with Mr. Roberts to get the conditions of a new contract in print, and I discussed those conditions or submitted them to this committee, and then brought up the question of what would be a fair and equitable arrangement between the Pullman Company and the Central Transportation Company; that whether the lease should be modified to meet the very great reduction there that absolutely would be the result of a new contract, such a one as Mr. Roberts would make, or whether an exchange of stock should be made, and those propositions and suggestions were discussed by the hour, I suppose, during those twenty or thirty interviews, lasting all the way from two to six hours—sometimes far into the night—and various propositions were made by the committee of the Central Transportation Company. The first one that I remember was that they would receive $144,000 a year instead of $264,000. I showed them by the figures, by the earnings of the cars under the old contract and the great reduction in earnings by the new contract, that that would be impracticable. Then afterwards there were propositions made, I think, of $120,000 a year. Then again, at a later interview, or perhaps the same one, $110,000, and I could simply reiterate and show the statement that there was not that amount of money in it; after we had paid our expenses there would not be that amount of money to pay over. Then I suggested to the committee that they take up the matter with Mr. Goodman, the superintendent, with whom they
63 were acquainted—to go to his office and get at the definite facts

and figures and satisfy themselves that those were the earnings of the company, that the statements were correct according to the general figures I had made—the detailed figures—and, finally, I remember as the time approached, the expiration of this contract—that Mr. Roberts—that we had got the contract to a point that he was satisfied with, and it remained for me to say whether I would accept it on those terms. I noticed by the hotel register that I was here almost continuously for several days prior to that time; that at a meeting of not only the committee, but perhaps some others—I remember there was quite a full meeting of the Central Transportation Company's people—it seemed absolutely necessary that we should come to an understanding, because I had stated to them in all of these meetings and in every conversation that I had that it would be impossible, it would be impracticable, for me to make a contract with the Pennsylvania Railroad Company by which I should agree to operate the cars on the terms that they proposed for fifteen years, with a contract in existence binding me to pay four times as much as I would get; that was so obvious that I only spoke of it when it seemed to be necessary—when it was necessary for me to impress upon the minds of the directors that some action must be taken or we were in danger of losing the opportunity to make the contract with the Pennsylvania railroad. On the last week, I think, I remember the question came up in our discussion as to the value of the cars, suppose they were surrendered. We were discussing every phase of the question. Suppose we did not make the contract with the Pennsylvania railroad and these cars should be surrendered, what would they be worth? and upon that question there was quite a difference of opinion. Mr. John A. Wright at that time did the most of the talking. He made some figures. We simply came to a dead-lock as to the value of these cars, and I suggested that we leave that to some party that we both had confidence in, to express an opinion not binding upon either of us, but we would get the opinion of a man that might guide us, and in that connection we agreed upon Robert Harris, the president of the Northern Pacific railroad, and we both telegraphed—at least I telegraphed, and I presume Mr. Wright did. At any rate, Mr. Harris came, and we had a long evening session with him. I have a memorandum now in my pocket in Mr. Wright's handwriting, which says the committee will recommend the board of directors to accept $66,000, with option of exchanging the stock, seven shares of Transportation stock for two of Pullman, or they will recommend the board of directors to take $88,000 per annum without the option to exchange stock; that memorandum, as I say, appears to be in Mr. Wright's handwriting, that I now have.

Q. State, if you please, what occurred in the later interviews in reference to the execution of this agreement, and particulaly what occurred in reference to anything that was said as to the delivery or non-delivery of this paper with reference to the action of the stockholders.

A. We got at this meeting that I speak of, which, I think, was the 25th or 26th——

Q. Of what month?

64 A. Of February—Mr. Wright's written memorandum or proposition, and then the next morning—it is my recollection that some member of the committee, I cannot be positive, but I should think it was Mr. Lane, told me that their board had decided to offer the $66,000, to receive $66,000 per annum and an option of exchange of stock—four shares of Central Transportation for one share of Pullman, or two dollars' worth of stock for one dollar of Pullman; that they would have a meeting. I then said, "It will be necessary to have this matter closed; a modified lease will have to be prepared and executed, because I must have that before I can involve myself in a contract with the Pennsylvania railroad." I had stated that on almost every occasion and I restated it then. My recollection is that a meeting of the Central Transportation board was called at Mr. Lane's office for that afternoon, and that myself and, I think, Mr. Atterbury and General Porter went down to Mr. Lane's office with a view of seeing whether there was any question that the board might want to ask pending their discussion of it. We were ushered into the front office and remained there until the doors were opened and it was announced they had passed the resolution authorizing the modification, and I remember going in then to the back room and sitting down, and the question was brought up by somebody, I should think it was probably Mr. Lane, asking if they could not insert a line to the effect that this lease must be approved by the stockholders. I explained that that would not answer my purpose; that I was obliged the next day or the next day but one—the next day, I think—to give a definite answer to Mr. Roberts if I would or would not accept the terms of the contract which we had agreed upon. I could not do that without a positive contract with the Central Transportation Company, and explained at considerable length that I would get my company into a very peculiar position if there was a binding contract by which I should pay $264,000 and I was making a contract with another company by which I should only get $66,000, and then I depended upon the action of the company which held me for $264,000 to reduce that—I should very much rather let the Pennsylvania railroad run its own sleeping cars. I could not undertake to do it. I was, as I say, decided, and discussed that at some length. The result was that a contract was agreed to then and there, and — was only the signature of it; the execution and delivery, as I remember, was only delayed because the seal was not at Mr. Lane's office. The seal was at the office, I presume, of the treasurer of the company.

Q. Was the paper there at the time?

A. The paper itself was there.

Q. It had been prepared by whom?

A. Well, I am unable to state that.

Q. What reason did you give specifically, in connection with the Pennsylvania railroad, why the paper should be concluded immediately?

A. I said that Mr. Roberts was holding his report to the stockholders to announce the completion of this negotiation. It was gen-

erally known that the negotiation was going on, and I explained to the Central Transportation board that if this was an approval
65 and Mr. Roberts announced it as a fact accomplished there would be no further question about it. If he, instead of that, was obliged to refer to it as something still in negotiation, the question of contract would be in doubt, might be objected to, and I thought that their interest and ours—that is, the Central Transportation Company's interest and the Pullman Company's interest—would be better served if the matter was concluded. Knowing, as I did, that the amount of rental that I had agreed to pay was about all that could possibly be gotten from the operation of the Pennsylvania line, I was anxious to have this closed up. I had been negotiating then for a year and a half——

By the COURT:

Q. This is what you told them?
A. Yes, sir.

By Mr. BULLITT:

Q. Come to the next morning, when the paper was executed and delivered.

A. Now, as to that, the seal was not at Mr. Lane's office, and it was stated that they would get it to the Continental Hotel the next morning by nine o'clock, so that as soon as that was executed I could notify Mr. Roberts by eleven o'clock. I had promised to tell him by eleven o'clock the next day whether I would accept the contract or not, and he needed it at that time in order to go before his directors at twelve. Therefore the directors or the officers of the Central Transportation Company were to meet me at the Continental Hotel at nine o'clock. They did meet me there at nine o'clock, Mr. Lane and Mr. Bingham and Mr. Cottringer, with the contract and the seal of the company, and then again the question of putting a line into this modified lease, making it subject to the approval of the stockholders, was spoken of, and I was very decided, as I had been the day before. I said, "I shall never make a contract with the Pennsylvania railroad until this matter is fixed, definitely fixed, and I have given you ample reasons for that. I shall not allow a line of that kind to go into this contract. I believe the board of directors have full power and authority." I had taken the matter before the general counsel, Judge Lochrane, and in whom I had great confidence, and he had so advised me, and I said I was willing to take the chances on the power of the board to make the contract; that is what I said.

Q. Did you say, either then or at any other time, that you would take the chances of the stockholders approving?

A. Never; take the chances on the power of the board to make it, as I had been advised by my counsel that they had power.

Q. On that morning, when you refused to agree to let that line be put in, did you or not refer to counsel's advice on the subject? I mean in that meeting on the morning on which the paper was to be delivered.

(Objected to.)

Q. State, as nearly as you can recollect, all you said when that proposition was made to put that line in.

A. In the morning, do you mean?

Q. In the morning.

A. I think I stated that I had been advised by the general counsel of the company that the board had full power, and that on
66 no account would I permit or accept it with the qualification that was proposed; that I would not make; would not close; would not notify Mr. Roberts of my acceptance of the conditions unless I had this paper executed unqualified; that was my position.

Q. What, then, was done after that?

A. The paper was executed and handed, if I recollect, by Mr. Bingham to me. That is matter of recollection. I have a strong impression that it was executed — handed to me, and I know I then went to Mr. Roberts' office from the Continental Hotel and notified him that I would accept and execute the contract, and that the business could run from that day under the terms of the new contract. The contract itself could not be prepared for some time, because there were details of schedules of cars and matters of detail were arranged, but he might consider the contract as between us closed and the accounts kept on that basis.

Q. Has that been done since?

A. That has been done since, dating from that day. The formal execution of the contract was delayed some time by reason of scheduling cars and other matters of detail.

Q. You heard the testimony of Mr. Stevens, Mr. Brooks, and Mr. Obdyke, in which, I believe, they all substantially agreed that you had said you would take the chance of that, they understanding from you that you meant or said you would take the chance—you intended to take the chance of the stockholders' approval. Now, will you please state what you did say to them on that subject.

A. I stated in all my interviews before the board of directors and in the interview with Mr. Stevens at the Continental Hotel substantially as I have stated now—that I was advised the board had power and that I was willing to take, or had taken — that time, the chances on that—that the board had the power to make an agreement. I never said to anybody that I would take the chances on the ratification of the stockholders; it was too large a chance to take.

Q. You accepted that paper, then, as having been delivered by the president of the Central Transportation Company, I understand?

A. Yes, sir.

Q. To you, as the president of the Pullman Palace Car Company?

A. I did.

Q. That paper has been in your custody ever since, has it not?

A. Yes, sir; the custody of the company.

Q. I mean under your control?

A. Certainly; under my control ever since.

Q. Did you at any time, to anybody connected with this company, agree or state that you would accept that contract subject to the approval of the stockholders?

A. I have never made such a statement in my life. I never have had such a thought of accepting the contract subject to the approval of the stockholders. I explained so many times it was necessary it should be a completed instrument.

Q. How often had you explained that?

A. Well, I presume anywhere from fifty to a hundred and fifty times. In these talks, in making these negotiations, all those
67 things were stated over and over again, because the question had often come up and there were all sorts of questions, understand, in negotiations of that kind. People repeat themselves.

Q. When were you first informed of that resolution of the 21st of April, 1884, of the stockholders of the Central Transportation Company?

A. I am unable to say definitely, but I have a strong impression that soon after, some time, perhaps, in June or July, Mr. Cottringer told me that the stockholders had passed a resolution instructing the directors to make a modification of the lease. I was not made acquainted with the wording of the resolution at that time.

Q. When were you made acquainted with the wording of the resolution?

A. Well, I do not remember when; but there was nothing said in my hearing and in my recollection—nothing said about this resolution in our various meetings. I knew that a resolution, as I say, had been passed. I did not know its wording. It was not alluded to, according to my best recollection, in any of our frequent interviews and negotiations.

Q. When was the question, according to your recollection, first propounded of inserting in the contract between your company and the Central Transportation Company the language to which you have referred as being proposed to be inserted at the afternoon of that meeting?

A. Well, what was said and done at that meeting fixes my recollection upon that at that time, and I knew what that resolution was then.

Q. Had you known before?

A. I don't remember that I knew before. My recollection is that I may have asked for the resolution, but that I would not be positive of. I have no recollection whatever of having discussed the resolution or having had it brought to my attention at any of our previous meetings. It was brought the first time, I remember, when it was proposed to insert something in this modified contract.

Q. Then it was that you stated you had been advised by your counsel that the board of managers had the power to do this thing, and that you were willing to take the chances of that legal proposition?

A. Yes, sir. My recollection is that my consultation with the general counsel of the company was at Chicago, when I asked him

the question, when we were getting along to a modified lease, and I asked him then the question.

Q. Do you recollect whether or not you submitted that resolution at that time to him?

A. No; I don't remember of submitting the resolution. I don't remember clearly about that. I have no recollection of submitting to him more than verbally the question and discussing it at great length, but I have no recollection of any written communication.

Cross-examination by Mr. JOHNSON:

Q. The modified lease that you speak of between your company and the Central was executed on what day of February?

68 A. I think it was the twenty-seventh day of February; the lease will show.

Q. Is it your memory that it was executed on the actual day it bears date?

A. My memory is, as I stated, that the paper was prepared and I first saw it on the afternoon in Mr. Lane's office, and the next morning it came to the Continental Hotel, and there was signed, sealed, and delivered.

Q. I do not think you quite catch the point. Is it your memory that the paper was actually executed on the day it is dated, or on a day subsequent to the day it is dated?

A. Well, I cannot state it clearer than I have. It was executed on the day that it was handed to me, and I suppose it was dated that day, probably.

Q. Then we may take it that that paper was executed about the twenty-seventh day of February, may we?

A. The paper will show itself; the 27th or 28th.

Q. Will you tell me how long before it was that you consulted your general counsel in Chicago as to the powers of the board of directors?

A. No; I cannot tell you definitely; it was probably two or three months.

Q. And will you, as well as you can now recall, give to the jury the question you asked concerning the powers—the full question?

A. It would be difficult for me to give the question, as I——

Q. The words, of course not; the substance.

A. It was to the effect of the power of the board of directors of the Central Transportation Company to modify this lease. Their action—would it require the action of the stockholders.

Q. Why did you ask him about the action of the stockholders?

A. Because I wanted to know. I was dealing with the board of directors of the company on an important matter, and he being the general counsel I asked him the question.

Q. Was that the only reason that the stockholders and the powers of stockholders was inquired about? Have you quite fully given me the motive that influenced the question and the substance of the question?

A. I am unable now to give you any other or clearer motive than that, because my conversation with the counsel of the company was

of an informal character, and I asked him such questions as occurred to me at the time, and if my mind was running at the time upon this lease—upon this modified lease—I would naturally ask him his opinion about it.

Q. Do you not know that you have put it to us that you were willing to base your action in this very important matter upon the advice of counsel? Now, is it a fact that you thought that this advice was given you in such a very informal way?

A. His advice was very clear. His answer to me was very clear that the board of directors had power. I do not know whether he probably looked it up. I can't say among the thousand things that happen in my office—I can't say just how he answered or
69 whether he answered at the time. I know that the impression was made very strongly upon my mind that the board of directors had this power. I felt it myself.

Q. What had raised the doubt in your mind that induced you to ask the question of counsel?

A. I don't think I had any doubt. I asked the question to be confirmed in my belief. The board of directors of the Pullman Company have power certainly. I never doubted that. We do not ask the stockholders for anything, except at the annual meetings we make the formal approval of their acts.

Q. I assume that the board of directors of the Pullman Company did not consult the stockholders. I will not go further than that, but if that was so why did you have any doubt at all in your mind inducing you to put a question to counsel concerning the power to do this thing? What raised the doubt?

A. I am not prepared to say that I had any doubt, but that I asked the question for further confirmation of my views of it.

Q. But your company, with its large dealings, must have been making very many contracts with the directors of other companies, had it not?

A. Yes, sir.

Q. So that that question, as a practical question, must have been one that had been solved by repeated action previously?

A. Yes, sir; I do not know of any. I do not remember now of any action or any transaction of my company with any other where there has been any doubt thrown or shown or expressed with regard to the power of the directors to bind their company.

Q. Well, then, can you not help me better in answering the question what raised a doubt in your mind inducing you to submit the question to counsel?

A. Well, I have not acknowledged the doubt. I do not remember that I had a doubt.

Q. I do not think we ever ask a lawyer anything if we haven't a doubt.

A. If we ask for confirmation. I have never seen the time when I did not feel that a board of directors had power to bind their corporation, and I do not know that I have ever had doubt of it, but I would ask a question to-day upon such a subject to see what some other lawyer might think about it.

Q. Do you remember in all of the negotiations, dealings, and contracts, the enormous ones of your company in the past ten years, having never asked such a question as to the power of the board of directors of counsel before? Because if you had it would not have been necessary to have asked it this time.

A. If you will allow me to explain, my dealings are generally with the railroal companies, and I never ask the railroad company for the confirmation of their stockholders. It occurs to me it did, when I made the contract with the Pennsylvania railroad; that if it was made by the board of directors that that bound the company, whether they approved it with the stockholders afterwards or not. No contract has ever been repudiated, and therefore it has not come up to my distinct notice.

70 Q. Will you say that it is not a fact that you knew that the stockholders of this company had passed a resolution requiring any modification to be submitted to them for approval? Is it not a fact that you knew that at the time you consulted counsel?

A. I would not be prepared to say that it is not a fact, because I do not know when—I do not remember when—I first knew of the contents of the resolution. I have a recollection of being told months ago—a month before—that a resolution had been passed. What the contents were I didn't know.

Q. Then we may take it as a certain fact that one or two months at least before this contract was executed you were aware that the stockholders of the Central Transportation Company had passed a resolution requiring that the modification of a lease that the board of directors might make should be submitted to them for approval. Is that so?

A. If I was aware of it, it made the same impression on me then that it has——

By the COURT:

Q. The only question was whether you were ever aware of it.

A. Well, I do not know that I was aware of it, but it would not have made a strong impression, because I read the resolutions that the board of directors were to make a modification and submit their action afterwards for approval, and that is in the line of what my board does. It makes its operations during the year and submits at an annual meeting for formal approval.

By Mr. JOHNSON:

Q. How if they do not approve at that annual meeting? What chance have they got?

A. The company would be bound all the same by the action of its board, as I suppose.

Q. What would you do in case the stockholders did not approve?

A. Any acts of my company?

Q. Yes.

A. Should do nothing. If the stockholders did not approve it the act of the directors would stand—the company would have to be

bound by it. The object, as I understand, of asking the stockholders' approval or having it approved is to see that the directors and stockholders are in line. If they did not approve, this is what they would do: If they had the majority of the board they would naturally turn the directors out and put somebody else in. That is the power I understand they have.

Q. Then your idea is that if the stockholders in annual meeting pass a resolution that they shall approve a modification of a lease by their directors that that means that the board of directors shall go on and make a modification binding upon the company, and that the approval means nothing more than that if they do approve they can approve, and if they refuse to approve they can do nothing; that was the way you interpreted it?

A. Yes, sir; that was what I believe. I believe the board of directors must act in the management of a company.

71 Q. What did you understand was required by way of approval of the stockholders; did you understand that the resolutions said it should be approved by them or they need not approve it?

A. I understood that the document, when it was handed me, was a formal document, so far as the Central Transportation Company and the Pullman Company was concerned; otherwise I should not have taken it. That was the best evidence I could get of my belief.

Q. Do you put it to the jury that the board of directors of the Central Transportation Company, with this resolution passed at the preceding annual meeting, discussed this subject with you without alluding to the fact that the stockholders' resolution to that effect had been passed?

A. My recollection is—I have discussed it some with other people to see if I could refresh my recollection on that subject, and I have no recollection of this resolution of the stockholders being brought up at any of our conferences until it came up at this directors' meeting on the 26th or 27th—the last directors' meeting.

Q. Mr. Bingham has said positively that it was mentioned repeatedly. Will you say positively that it was not?

A. I will say positively that I do not recollect it.

Q. Now, I think you said that what you understood was that in order to make this contract binding upon the Central Transportation Company it was only necessary to obtain a resolution of the board of directors, did you not?

A. Make a resolution of the board or the modified lease itself?

Q. Yes; the resolution of the board.

A. The modified lease approved by the board and executed by the proper officers, with the seal of the company, I regarded as ample and binding.

Q. Then you understood that it did require a resolution of the board of directors approving positively that modified lease, did you not?

A. I assumed that the document—the modified lease duly executed—had such a resolution probably. I did not look.

Q. That was only assuming one stage of it. You assumed that it

was necessary, in order to make that modified lease binding upon the company, that there should have been a resolution of the board of directors passing it, did you not?

A. I did not assume anything about it. I did not think anything. I did not go back of the paper itself. I do not know what, if I had thought of it, I may have assumed, but I took the executed paper, in connection with all that had been said about it, and assumed that it was all properly executed.

Q. That is, you assumed that there was a resolution of the board of directors authorizing its execution; is that so?

A. I won't say. I did not go into any detail with my assumption. I did not give it a thought from the time I took it. I assumed that I was dealing with a perfectly honorable board and honorable men, and whatever was necessary to do had been done properly, but as to any details or wording of any resolution I had no thought of.

Q. You knew that the president could not execute it, and Mr. Lane could not execute it, and the secretary could not execute it, without proper authority, did you not?

72 A. Well, as it was executed, I did not think of that. I do not know. I did not give that any thought. You are asking what was in my thought.

Q. I thought you stated that what you consulted counsel about was simply this: Whether a resolution of the board of directors was sufficient to authorize the execution of this paper, and he told you yes?

A. I beg your pardon; what I said was that the action of the board of directors would bind the company.

Q. Now, that action you knew had to be taken in a meeting of the board, did you not? With your great experience in corporations you knew that?

A. Naturally. Those boards act in meeting.

Q. Now, therefore, will you answer me this: Did you ever, from the beginning to the end, ask to see any resolutions by the board of directors permitting the execution of that paper?

A. This particular paper?

Q. Yes.

A. I think not.

Q. Were you aware of the fact that in the resolution of the board of directors authorizing the execution it was provided that it should be submitted to the stockholders for approval?

A. I was not and am not now.

Q. Then you made no inquiry whatever to ascertain what resolution had been passed. Let me ask you this: Did you not know that that paper was executed—that you had two interviews with Mr. Lane, Mr. Bingham, and Mr. Cottringer—one at Mr. Lane's office and the other the next morning, at the Continental, after the board of directors' meeting had adjourned?

A. I had an interview with them the next morning after they adjourned—possibly in the afternoon.

Q. Now, therefore, is it a fact that you, knowing that there must have been some resolution of the board of directors, were told by Mr.

Lane that he wanted to have inserted in this paper the proviso submitting it to the stockholders—that proviso, after you knew the board of directors had adjourned?

A. I do not know that it was before the board of directors had adjourned.

Q. After, the question was.

A. I do not know that it was after.

Q. I thought you said that it was said at the Continental Hotel at nine o'clock that morning?

A. It was said also at the Continental.

Q. Then, certainly you knew that the board had taken its action and had adjourned the day before?

A. Yes, sir.

Q. Now, Mr. Lane then said to you, you knowing that whatever action the board had taken upon it had then been taken the day before—Mr. Lane said to you that he wanted to insert therein a proviso submitting it to the stockholders for approval, did he not?

A. Yes, sir.

73 Q. Did you suppose that Mr. Lane had any authority at that late day, after the board of directors had adjourned, to modify in any way the resolution or action of the board concerning that modified lease?

A. No; I did not suppose that it would be the proper thing for him to do. I did not give very much thought to any branch of the subject, except that I would not accept the paper with that modification, and I was in a hurry then to get to Mr. Roberts' in order to keep my engagement with him, and I did not go into any particulars.

Q. But you certainly knew that Mr. Lane had no authority to modify what action the board had taken, did you not?

A. All I stated and meant to state was that Mr. Lane did propose this, and I objected to it.

Q. Did you not, as a business man of great experience, know that that was suggested by Mr. Lane because of the fact of the resolution of the stockholders requiring approval?

A. No; it was not so stated to me that the resolution—are you speaking of stockholders or directors?

Q. Stockholders.

A. I have no recollection of anything beyond Mr. Lane stating that there should be a line inserted, and I objected to it, and the lease was executed without it.

Q. The lease with the Pennsylvania railroad bears date the 26th of January, 1885, a month before this agreement with the Central Transportation. Will you tell me when, in point of fact, this agreement was really executed?

A. I think it was away in May or June.

Q. Then, in point of fact, the agreement with the Pennsylvania railroad bears date one month before the alleged modification of the Central and was executed not before May or June?

A. That agreement was formally executed after for various

reasons—Mr. Roberts' absence and my own absence, but the agreement has been in force from the date——

Q. There were two agreements, one called an agreement and another called the supplementary agreement?

A. Yes, sir.

Q. The agreement being dated the 26th of January, 1885, and the supplementary agreement being dated January 27th, 1885, were both executed at the same time, in May or June?

A. I presume they were.

By Mr. DICKSON:

Q. You were going on to say when the agreement was closed.

A. I stated in my examination that the agreement was closed on the day—within an hour that this modified lease was handed to me I stated to Mr. Roberts——

By Mr. JOHNSON:

Q. Why the delay?

A. I explained that also; that the detail of putting in certain schedules of cars took the time. It was a detail that did not affect the contract, except as it affected the class of cars that would be satisfactory for the different lines.

Q. Was not the satisfactoriness of the cars a very important part of your agreement?

A. It was the arrangement—an acceptance of certain cars.

74 The cars were all there, but they had to be scheduled and examined.

Q. And approved?

A. Certainly; and the agreement with reference to that was a detail on which no question had arisen between Mr. Roberts and myself, but which was something to be settled between Mr. Goodman and Mr. Pugh—not with a view to changing the contract in any way, because the contract provides that the cars to be furnished under it shall be acceptable and accepted by the manager of the road. We have no choice. We present a lot of cars to him under the contract, and he has to take time to look them over to see whether they are acceptable.

Q. If the contract provided in its own terms that there was a tribunal like the superintendent which had accepted the cars, then there was no possible point of this agreement that was left open, was there, because you had left the matter in dispute to be determined by a tribunal?

A. When I stated on that morning to Mr. Roberts that I accepted and would execute the contract as soon as it could be put in proper condition I regarded it then as a binding contract on the company I represent. I have frequently done that before.

Q. Will you say that these two agreements, printed as I have them here, were in all their terms agreed upon and accepted within a half hour, as you have said, of your having delivered to you this alleged modified lease?

A. In all substantial portions of the agreement.

Q. There is no word "substantial" in my question. Do you say that these terms as written were the terms of the contract which was finally signed in May or June?

A. Precisely, as I understand them. I could not say to-day, possibly, whether there had been any material changes with reference to names of cars, or something of that kind, but the contract as it is there is the contract that I agreed with Mr. Roberts on that morning to make. Whether there is any wording that does not change the intent of the contract changed I could not say—I am unable to say.

Q. Well, then, can you give me any other explanation than you have given of the reason of the delay in executing these two papers?

A. Simply because Mr. Roberts, as I suppose, had confidence in me, and we had agreed upon this, and it was left for our subordinate officers to arrange and put in shape for execution, and then I remember executing it a long time before Mr. Roberts did. When it got here Mr. Roberts was away. I had no anxiety about it, and knew Mr. Roberts would carry out the agreement. I think some communications had passed between us on the subject—telegrams or letters; but I would have felt perfectly confident if it had not been signed for a year.

Q. That is all the explanation you can give?

A. That is all the explanation I can give.

Q. Is it not a fact that two months before this was executed you received this copy of the resolution of the board of directors of the Central Transportation: "Resolution unanimously adopted by the board of directors of the Central Transportation Company March 21st, 1885. On motion of Mr. Howard the following resolution was unanimously adopted?"

75 Mr. DICKSON: What do you propose now?

Mr. JOHNSON: I have put it that this paper was executed on the faith of his belief in this, and I am asking him whether two months before this was executed this resolution was not communicated to him.

The WITNESS: I understand the resolution. Is it directed to me?

Mr. JOHNSON: Directed to you and your secretary, and so forth. I will read it, and ask whether two months before this paper was executed with the Pennsylvania railroad you did not receive a copy of this resolution of the board of directors of the Central Transportation Company of March 21st, 1885.

(Mr. Johnson reads copy of resolution referred to.)

Q. Please tell me, with that attempt to manufacture evidence, of which Mr. Bullitt has spoken, when you were told by these directors that the lease had been delivered to you by its officers upon the condition that the same should not become binding until formally ratified, what reply you made.

A. I do not remember that I made any reply to it. I had made the contract.

Adjourned until Thursday, June 17th, 1886, at 10 o'clock a. m.

PHILADELPHIA, THURSDAY, *June 17th*, 1886.

Cross-examination of GEORGE M. PULLMAN resumed by Mr. JOHNSON:

Q. I think you said in your examination-in-chief that—I gathered half an hour, but at any rate within an hour or so after the execution of this so-called modification you showed it to Mr. Roberts; did you show it at all to Mr. Roberts?

A. No; I think I did not show it to Mr. Roberts. I reported within an hour of that time to Mr. Roberts that the contract had been executed, and that I would accept the terms proposed.

Q. In point of fact, your company did not execute this lease or modification for some time after the 27th or 28th of February, did it? This paper has been put in evidence by Mr. Bullitt.

A. The Pullman Company contracts are considered executed when they have been agreed to.

Q. That is on the principle of your word being as good as your bond, but I am looking at the thing itself. In point of fact, this contract was not executed by your company until some time afterwards—the so-called modification; you understood me to mean modification, did you not?

A. Modified lease; there were two executed by the Central Transportation Company.

Q. Yes.

A. I accepted and acted under it; the formal execution by the secretary of the company was made subsequently.

76 Q. Let me show you this letter, dated March 10th, 1885. That is a letter from your secretary, Mr. Weinshimer, is it not?

A. That is his letter.

Q. So that, in point of fact, this so-called modification was not executed by your company anterior to the tenth day of March, on which day it was sent from Chicago to the Central Transportation Company. Is that not so?

A. It appears by the letter that it was formally executed about that time; it may have been before; I do not know.

Q. At any rate it remained in the hands of the company until the 10th of March?

A. Of our company?

Q. Yes.

A. Yes, sir.

Q. That applies to both copies. You must have taken both copies along with you?

A. Yes, sir; both copies, and this other copy was returned as soon as I got home.

Q. Do you remember who prepared the lease? Mr. Bullitt, I know, asked you yesterday, and you did not then recall. Perhaps you may recall now.

A. The modified lease?

Q. Yes.

A. Mr. Atterbury had something to do with it, is my recollection—Mr. Atterbury and Mr. Lane, probably, but I am not perfectly certain. Mr. Atterbury was here, and I believe he had something to do with it.

Q. Lawyers always do have something to do with these papers?

A. Mr. Lane, I am quite sure.

Q. You spoke yesterday of the meeting at Mr. Lane's office of the board of directors, you remember?

A. Yes, sir.

Q. And that then there was some resolution passed by that board. That you were not present at their deliberations; remained in the front room. You recall that circumstance?

A. Yes, sir.

Q. That lease also, you have said, or both copies of that lease, were present in that office on that day?

A. Did I say——

Q. I think you did, but, of course, I may be wrong.

A. I presume they were. I do not know positively about it.

Q. Do you know out of whose possession those then executed leases went into the possession of the board of directors?

A. The unexecuted leases after I left the office?

Q. Prior to the board of directors of the Pullman passing their resolution in whose possession were those executed leases—the drafts as they were then?

A. I don't know anything about the unexecuted leases. I know that when the leases were properly executed they went into my possession and remained there.

Q. So I understood; but I am now coming to a period a little anterior to that, and when you were at Mr. Lane's office, and when this board of directors had before them the lease, do you know when you first went to Mr. Lane's office? Mr. Atterbury, I think, you sent a copy to, did you not?

77 A. I think I did.

Q. And I think you sent it to General Porter also?

A. Yes, sir.

Q. No one else that you recall?

A. Probably my private secretary, Mr. Smith.

Q. Now, do you remember whether you took with you when you went to that office those two drafts of the leases and handed them over to Mr. Lane so the board of directors might take action upon them?

A. I don't recollect that. What I recollect, I think—I have given some thought to it since my examination yesterday—was that we had been advised that the board of directors would act upon the modified lease that afternoon; that we went there and were shown into the front office, and that after a few minutes, perhaps half an hour, the door was opened and I was told, I think, by Mr. Lane, that the board had ratified and approved the modified lease. Thereupon we walked in and sat down in the room; I did, and I think General Porter did; at least we all sat down in the room, the directors all being present. Then some one raised the question or said

they proposed—they ought to have put in a clause submitting this to the stockholders. I then reiterated the reason why the modified lease would be of no avail if such a clause was in; the company could not conclude a contract with the Pennsylvania railroad with any qualification as to the modified agreement between the Pullman Company and the Central Transportation Company. Then it was stated that the lease could not be executed that night on account of the seal being in West Philadelphia. I said then that my appointment with Mr. Roberts was at eleven o'clock the next morning, and asked them if they could get the documents delivered to me by the next morning in time for my appointment. They said that they would meet me at the Continental Hotel at nine o'clock, with the seal, and would execute and deliver the lease—deliver the modified agreement—and that ended all that I remember to have occurred at Mr. Lane's office.

Q. Now, let me keep you there for a moment. Then, when you met the board of directors, after they had taken their resolution in the back room, there was a suggestion made by some one of the board of directors that there ought to have been inserted in the lease itself the proviso about the approval of the stockholders. Is that so?

A. Not in the lease itself, but that there ought to have been a qualification of that kind. It was suggested by some one that there should have been a qualification of that kind, and then I gave my reasons as I have just now stated.

Q. Let me see whether the suggestion was that there ought to have been a qualification in the resolution, the draft, or the qualification actually inserted in the lease itself. Were you not told that in the resolution of the board of directors the acceptance by them was subject to the approval of the stockholders?

A. I was not told anything about a resolution. I do not remember. I have given the subject very careful thought. I do not remember the question of resolution being brought up there. My mind was on the agreement—that the company had been for
78 a year making an agreement and we were talking about the agreement. They stated that the agreement had been ratified and then said it ought to have been, or some one thought it ought to have been, qualified by requiring the stockholders' approval, and I explained why I could not accept that.

Q. Let me see, by recalling to your mind the situation, whether your memory won't be refreshed. At that meeting there was no discussion between yourself and the company of the terms of the modification, as I understand, because there was a cut and dried—I will take away that—there was an actually prepared modification, this very modification then and there, so that they must have embodied the terms which had been previously discussed between you, had it not?

A. Yes, sir.

Q. And therefore was there, in point of fact, at that time anything remaining open but the question of whether the board of di-

rectors would authorize the execution of that particular form of modification?

A. I have just stated to you that the very first notice I had on going there, the door opening, was that this modification had been ratified and approved by the board. The conversation which occurred afterwards was informal, and in my mind referred only to the modified lease. I did not go in and question. I did not ask them about the form of resolution. As I explained yesterday, it is not my habit. I do not know that I ever asked to go back—asked the board of directors to go back and show me——

Q. Then, in point of fact, you made no inquiry whatever as to the terms of the resolution by the board of directors?

A. I did not. I made no inquiry whatever. It did not occur to me to do so.

Q. And then there was the suggestion by some one there that there ought to have been inserted this qualification. Now, did you gather that he meant that that ought to have been inserted in the vote of the board of directors, or ought to be inserted as a proviso written into the lease itself?

A. Well, I gathered that it ought to have been in the lease itself. That was my impression.

Q. Now, therefore, did you not, as a man of very great capacity for affairs, gather, from the suggestion that there ought to be inserted actually into the lease itself a proviso about the stockholders' consent, that some action had been taken requiring such consent, and that the point was whether it should be inserted in the lease or understood otherwise?

A. There was no intimation of that to me. I had no idea while I sat there that there was anything but exactly what had been stated to me; that the contract had been ratified and approved by the board. I had no suspicion——

Q. When this gentleman suggested that there ought to have been a proviso inserted you understood exactly what he meant, did you not; that he was referring to this resolution at the annual meeting of the stockholders requiring the approval of the stockholders? You knew just what he meant?

79 A. Very likely. He did not say—I have no recollection of anything being said about the resolution, but I assumed that what was meant was, in a general way, the approval of the stockholders.

Q. Now, then, as I understood you yesterday, again when you met at the Continental Hotel, about nine o'clock, there was mentioned this suggestion by some one, that in the lease itself ought to be inserted this proviso about the approval of the stockholders; is that not so?

A. The very same question was brought up in the morning, and I was somewhat impatient at that and restated. It seemed to be trifling; and thereupon the modified lease was duly executed and delivered to me without qualification of any kind.

Q. Then, in point of fact, the discussion on both of those occasions

was as to whether there should be a priviso inserted in the lease itself requiring the approval of the stockholders; is not that so?

A. In the morning there was no paper there but the lease.

Q. Of course not. The proviso inserted in it, I mean—that is, written in it—interlined.

A. The conversation must have referred necessarily to the paper.

Q. When were you first aware that notices had been sent out at the instance of the board of directors who had voted this modification, in whatever form they voted it—a notice to the stockholders to meet for the purpose of approving that lease? You were a stockholder yourself, were you not?

A. At that time?

Q. At that time.

A. I am unable to say. I think not, however.

Q. You hold some thirteen thousand shares, do you not?

A. Yes, sir; I am a large stockholder in the company now.

Q. Do you think all that interest was acquired after this lease?

A. After the modified lease?

By the COURT:

Q. You are a stockholder in the plaintiff company?

A. I am the largest stockholder in the Central Transportation Company.

By Mr. JOHNSON:

Q. Did you not hold some of those shares at this time?

A. I think not. I think I did not hold any shares at that time.

Q. When, at any rate, then—I merely mention that to get the date fixed, if possible—did you first learn that the board of directors had issued a call to the stockholders to meet for the purpose of considering this modification?

A. About that time I remember to have heard of a call for a stockholders' meeting. About that time.

Q. Did you not hear of that before this lease executed by your company was sent, on the 10th of March, from Chicago?

A. I may have done so, and probably did.

The COURT: What lease do you refer to?

Mr. JOHNSON: The modified lease.

80 By Mr. JOHNSON:

Q. Did you not write to Mr. Cottringer a letter making some suggestions to be made at the meeting of the stockholders to assemble for the purpose of ratifying the lease?

A. I have no recollection. If there is a letter——

Q. It is fair I should show you that. Of course, that is your signature. We all know that. (Letter shown witness.) I want to refresh your memory as to whether you remember making a suggestion. That is a fact, is it not?

A. Yes, sir.

Q. That is, the suggestion was in this shape in a letter from you to Cottringer, treasurer, of the 30th of March, to this effect?

A. Remitting a check for rental.

Q. Just so. Check and one thing and another. "Understanding that your board of directors had determined to defer submitting the modification of the lease for formal approval by your stockholders until their annual meeting on the 20th of April next, I call your attention to the fact that the option to exchange Transportation for Pullman stock, by the terms of the modification agreement, expires before that date. In view of this, and with a desire to accommodate the stockholders of your company as far as I can in this matter, I am willing to modify our agreement so far as to extend the time within which the option to exchange may be exercised by your stockholders to the seventeenth day of May next, and hereby authorize your board to make this announcement to their stockholders accordingly." Now, therefore, you were thoroughly aware of the fact that there had been a meeting of the stockholders called for this purpose antecedently to this, which had been adjourned, for the final consideration of this modification of the 20th of April, were you not?

A. Yes, sir.

Q. And at that meeting of the 20th of April you authorized Mr. Cottringer to make that suggestion that you embodied there?

A. That was the annual meeting; yes, sir.

Q. But you were thoroughly aware that the special meeting, which had been called in the early part of March, for the purpose of considering this modification, had been adjourned for final action upon it to the annual meeting of the 20th of April, were you not?

A. I do not remember why that was done. I remember that the stockholders' meeting that was called soon after the modified lease was made by the directors was a meeting at which they refused to hear the report of the directors. The meeting seemed to have been in the control of two or three people who were not very greatly interested in the company, and they would not listen and would not understand what the directors had been at work at with me for a year, and consequently I felt that all *bona fide* stockholders should have the benefit of the exchange of stock for a long time after the annual meeting, at which I thought that wiser counsels would prevail, and that the subject would be taken up by the stockholders in a wise way, as it had been by the directors.

Q. What did you think was to be taken up by the stockholders?

81 A. I was well aware by a statement made to me by Mr. Bingham on a visit to New York by appointment, in which he brought his attorney, Mr. George Biddle; met me about the 30th of March, at the Windsor Hotel, in New York, and by himself and his counsel urged me in the strongest manner possible to cancel or waive the modified agreement made by the directors, and he stated as a personal reason for it that he feared personal suits by some stockholders; that there was a great deal of trouble; that they had had a great deal of trouble at the stockholders' meeting; that it had broken up in a row, and that if I would cancel the modified lease that he would—Mr. Biddle, I think—and he would take off their

coats and would endeavor to get the stockholders to approve this. I then explained to Mr. Bingham that I, acting as trustee for the Pullman Company and its stockholders, had made this contract with the Pennsylvania railroad based upon this modified agreement, and that I could not, in justice to the trust, give that up after I had placed the company for fifteen years under a contract with the Pennsylvania railroad.

Q. That, of course, I did not ask about, but I am always willing to get information on anything; but let me ask you did that meeting precede or follow the writing of this letter I have just put to you, of the 30th of March? Maybe it will help you if I show it to you.

A. It was just about the time of this letter.

Q. Before or after?

A. That I am unable to say; it was just about the date of that meeting, and I should think influenced me in saying that is intended for the individual stockholders that would have the opportunity to exchange the stock; it was not intended to influence the meeting.

Q. There is nothing said in this about being trustee for the Pullman Company and standing by it; all you say here is to mention a certain fact to the stockholders at that meeting to be called.

A. This is a communication—a business communication—remitting a check for rental to the Central Transportation Company, and this is a formal notice that we will extend the option to exchange.

Q. But why was it, if you were taking that advanced position about being a trustee for the Pullman Company, that you did not say in flat words, "There is no use of this meeting considering that modification, because it is settled and ended?"

A. I was very well aware that the meeting would take it up. My stockholders' meetings always take up for formal approval the act of the directors at the annual meeting; that is usual.

Q. Then, when you said that, understanding that your board of directors had determined to defer submitting the modification of the lease for formal approval by your stockholders until the annual meeting of the twentieth day of April next, you were thoroughly aware that that meeting could not deal with the subject because it had finally closed?

A. So far as the Pullman Company was concerned, I considered they had nothing further to do. The contract had been made
82 by the company and we had acted under it, but as between the stockholders and their own board they would discuss it and take such action as they saw fit. I suppose if they were not satisfied with the board they would probably elect another board—they would proceed to act upon it.

Q. Now, I showed you yesterday just as the court adjourned a copy of a resolution which was forwarded at the instance of Mr. Biddle to your company. Tell me whether that is not the acknowledgment of that letter by your secretary and of that resolution.

(Shown witness.)

A. It is the acknowledgment of it. It is an acknowledgment of something. I was not in Chicago. I was not in Chicago at that time. I was in New York. This is a communication received and acknowledged without stating what the communication was.

Q. You do not know of any enclosure except that resolution, do you?

A. I do not know of any enclosure. I do not know what that was, but it was a communication from the Central Transportation Company and acknowledged.

Q. After the adjournment, if you thought of it at all, has any explanation occurred to you of your reason for not making some contradiction of what was asserted in that resolution, that the officers had delivered the modified contract to you, subject to the approval of the stockholders?

A. The fact is that having negotiated for more than a year, having had more than twenty-five meetings with this board of directors, having stated so many times, probably more than one hundred times, that it was a critical condition in the affairs of this company, and that the preservatiou of its property—the Central Company's property—required that a contract should be executed with the Pennsylvania railroad in order that there would be some earning power in their property, that I could not agree to operate the cars on terms where I should have to pay the Central Transportation Company more than the cars would earn, and that with the full knowledge of that——

The COURT: During the course of Mr. Pullman's testimony he has stated just what he is stating now.

The WITNESS: May I make an explanation to the court? The point I was coming to differs somewhat from your understanding in this, that I was disgusted, if that is a proper word to use in this court; that I had such a feeling of disappointment and disgust, as I might say, that the board of directors, after leading me by these negotiations into this position with the Pennsylvania railroad and getting me in a condition where I would be forced to carry out the contract with them, then that they were going back and endeavoring to assist the stockholders in repudiating an agreement that was an honest and *bona fide* agreement, that I had received as such, and I gave no attention—if I had written a letter in reply it would have embodied a great deal of feeling that I had, and I passed it over. I felt that the modified agreement was a legal and binding one, and that they could settle their own matters in their own company in their own way. That is why I am leading up to it with a longer statement than you seemed to think was proper.

83 By Mr. JOHNSON:

Q. You have said that at this first meeting that was called it appeared to be controlled by two or three people who had no interest in the matter, or very little?

A. Had little or no direct interest, as I understood.

Q. From whom did you gather that information of the status and conduct of the meeting of the 18th of March—the first meeting?

A. Mr. Bullitt was present at that meeting, and, I think, stated to me that Mr. Lockwood, whose name I had heard in connection with efforts to break up the Pennsylvania railroad, was a leading spirit there.

Q. Now, let me see if that was the status of the meeting—whether, at the annual meeting when the stockholders considered this, there was a unanimous vote—possibly two or three hundred shares of the old board opposing—against this modification?

A. It has never been claimed to me—I have never understood from any source whatever that the stockholders or any committee representing them ever took up the question to know what the merits of it were—to know what the revenues were and what the rents should be, but that the——

The COURT: Allow me to suggest whether you are not leading into a field that may lead to unnecessary inquiry?

Mr. JOHNSON: I only wanted to make a suggestion that this meeting was controlled by two or three people when there was a unanimous vote against this thing. I will, however, act on your honor's suggestion.

By Mr. JOHNSON:

Q. Were you not aware that the very meeting of the board of directors which authorized this lease subject to the stockholders' approval called for a meeting of the stockholders to determine whether or not they would approve it on the 18th of March?

A. You asked if I was aware——

Q. That the very board at the very meeting at which they voted to accept this lease subject to approval ordered a call of a meeting of the stockholders to determine the approval on the 18th of March?

A. I was not aware at that time. I was aware subsequently that such meeting had been called.

Q. And you say that almost simultaneously with this there was a call for a meeting of the stockholders to act upon it?

A. I do not know that I saw the call. I went away immediately after this interview with Mr. Roberts. My business being done, I went away, and the documents or calls did not reach me. If at all, they reached me some days later, which I do not now remember.

Q. Still, is it your recollection that you took so little interest in the matter that you did not have sources of information from which you gathered that information?

A. I had no sources of information, nor made no inquiries with reference to that. My own mind was upon the closing of the modified agreement and the contract with the Pennsylvania railroad that was so important.

84 Q. On the 18th of March, when this meeting met, you had information through Mr. Bullitt, your counsel, for he reported to you something about that meeting?

A. Yes, sir; I do not know that Mr. Bullitt reported about the meeting. I can't say now.

Q. But still it was that meeting—there were only two meetings?
A. Mr. Bullitt was present at that meeting.
Q. They must have been pursuant to your request?
A. Very likely.
Q. Now, therefore, you did take enough interest in that meeting of the 18th of March to be represented by a distinguished counsel, did you not?
A. I do not think I was represented in the way of being afraid.
Q. You could not have been better represented, we will all say.

Mr. BULLITT: Thank you.

A. Yes, ably represented; but that Mr. Bullitt was there representing—he can best state himself what he represented.
Q. No; I think you can.
A. Mr. Bullitt would not be allowed in that meeting unless he was a stockholder.
Q. Then did you not make him a stockholder?
A. I think not. My recollection is that I had no stock, inasmuch as I had purchased the stock—I would not be willing to say without referring to the books as to whether I was a stockholder at the time.
Q. Is it not your recollection that you took sufficient interest in that meeting of the 18th of March to request the attendance of Mr. Bullitt there?
A. Very likely I may have requested Mr. Bullitt's attendance, or General Porter may have done so.
Q. Well, that is the same thing.
A. Yes; in the company's interest.
Q. Now, I ask you how long before that meeting of the 18th of March, at which Mr. Bullitt attended, you became familiar with the fact that a call was out for a meeting of the stockholders of the Central Transportation Company to determine whether or not they would approve of this paper which had been executed. The 27th of February is the date of the paper.
A. I presume I had been advised of that meeting for several days.
Q. Do you not think the probabilities are that you were advised of the meeting as soon as it was called?
A. I should think it probable I was.
Q. And therefore must have been advised before your company had executed the agreement on the 10th of March?
A. On the 10th of March?
Q. Yes.
A. I would be unable to say, because I was not—until I consulted some data I could not tell whether I was in New York or Chicago. I was traveling between New York and Philadelphia and Chicago, and the date at which I would have been advised would depend so much upon where I was at the time. I did not regard the action
85 of the stockholders as affecting the transactions between our companies, and my interest in it was altogether more general than that.
Q. Now, do you recall any letters that you wrote to anybody connected with this company protesting or objecting to any considera-

tion by the stockholders of this proposed lease on the ground that it had been finally executed and could not be altered?

A. No; I did not write any letter.

Q. During the whole course of your negotiations with the old board of directors of this company, did ever any one of them say to you that they meant to dispense with the requirement that the stockholders had made in April, 1884?

A. No; the subject never was discussed between any director and myself that I know of.

Q. Was your whole motive in making the contract with the Pennsylvania railroad the mere receipts which you would get from running cars over their line or the incidental advantages that you would derive from having through run of your cars? Let me ask you to say yes or no to that, and then, of course, explain your answer in such a way as your judgment suggests necessary.

A. It was not my whole motive.

Q. Any explanation you are perfectly entitled to.

A. The explanation is this: I had represented this company and the Central Transportation Company or its stockholders for fifteen years in the payment of their twelve per cent. dividends under the original lease. The stock was owned, as I understood, by nearly a thousand people. I felt that the stockholders in the main were not advised of the precarious nature of their property. They had not been advised by the directors. I knew that when the $300,000 or $400,000 of mileage of the Pennsylvania Railroad Company was then paid, and out of which I was paying them their dividends on stock that it would be a great disappointment to them. I was consequently exceedingly anxious that a new contract should be made, and that it should be put on a business basis; that whatever dividends the property would earn would be lasting, would be permanent, and also that our relations with the Pennsylvania railroad, which, through the fifteen years we had operated there had become satisfactory to both, should be continued. I stated to Mr. Roberts, and stated also to the directors of the Central Transportation Company repeatedly, that if it were a new subject, if it was a question of advising my stockholders to furnish capital to equip the Pennsylvania lines upon such a contract as was proposed, I would not do it, but to settle this matter, get these thousand stockholders of the Transportation Company with something in their possession that was legitimate and came from legitimate earnings and was lasting, was a very prominent motive in my mind, and caused me to come here twenty-five or thirty or forty times to bring this about. I wish to say that the Central Transportation Company board did not come to Chicago to meet me. I urged them to send a committee to Chicago and go into the examination of the accounts and everything connected with it. You know as much about that as I do.

86 Q. When they came you and your auditor were away, however, were you not?

A. I would be glad to explain that if it is proper.

The COURT: If Mr. Johnson asks for it it is proper.

Mr. DICKSON: He has asked it. I only ask Mr. Johnson to understand that he is not to make any comments if he closes the mouth of the witness in giving an explanation.

By Mr. JOHNSON:

Q. There were several leases mentioned here. You spoke in your examination-in-chief about the leases. The first lease is the lease to the Pennsylvania Railroad Company to run upon their road between Philadelphia and Pittsburgh. That, of course, was covered by this new agreement with the Pennsylvania railroad?

A. Yes, sir.

Q. The second lease was a lease with the Northern Central railway. Your Pullman cars are running over that railway?

A. Yes, sir.

Q. The third is the Baltimore and Ohio. On that road you are not running?

A. No.

Q. The fourth were all sleeping cars between the city of New York to Philadelphia, Baltimore, and Washington. On that you are running?

A. Yes, sir.

Q. The fifth was the Pittsburgh, Fort Wayne and Chicago, and on that your cars are running?

A. Yes, sir; on the other lines we were not running by virtue of this contract until the new one was made; not on all of them. The Philadelphia, Wilmington and Baltimore——

Q. But I want to know at the present time how many of these lines you are running over. The fifth was the Pittsburgh, Fort Wayne and Chicago. Were you running over that?

A. Yes, sir.

Q. The sixth is the Cincinnati, Hamilton and Dayton and Dayton and Michigan? You are running over that?

A. The contract is expired, and we are not running over that road by virtue of a contract, but we are operating cars at the present time, but the contract has expired; we have no rights there; so that I do not regard it—it is not running under a contract; we may be taken off to-morrow.

Q. All I want to know is the physical fact—over how many of these lines your Pullman cars are running? You say they are running, no matter how, over the Cincinnati, Hamilton and Dayton and Dayton and Michigan?

A. The Cincinnati, Hamilton and Dayton and Dayton and Michigan, I suppose, is one road.

Q. The seventh is the Bellefontaine and Indiana and Indianapolis, Pittsburgh and Cleveland. Your cars are running over that line of road?

A. I can't say; I do not know the lines by name; I might convey a wrong impression. There is no contract. I only know the roads by name that we have contracts with.

Q. I am sure you are pretty well posted as to the places over which Pullman cars run.

87 A. Yes, sir; we have seventy-four contracts with seventy-four railroads. I would be unable to say without looking over the list of lines whether we were running over the Bellefontaine line or whether somebody else. I couldn't say whether we were running over any line.

Q. The Marietta and Cincinnati—are not your cars running over that line?

A. I think not. That is a part of the Baltimore and Ohio system, as I recollect it.

Q. Then the next is the Central Ohio?

A. That is a part of the Baltimore and Ohio system.

Q. The next is the Indianapolis and Cincinnati. You are running over that?

A. Yes, sir; without a contract.

Q. The next is the Ohio and Mississippi. That is the Baltimore and Ohio system?

A. Yes, sir.

Q. And you are not running over that?

A. No, sir.

Q. Then, next is the C. C. & I. C. You are running over that?

A. That is a part of the Pennsylvania system.

Q. And the next is the Terre Haute and Indianapolis. You are running over that?

A. What is that called? The Vandalia? We are running over all that compose the Pennsylvania system.

Q. The Terre Haute and Indianapolis, and the next the St. Louis, Vandalia and Terre Haute. You are running over that?

A. The two were part of one line.

Q. And you are running over the Jeffersonville and Indianapolis, are you not?

A. That is a part of the Pennsylvania.

Q. And you are running over the Louisville, Cincinnati and Lexington, are you not?

A. If that is a part of the Pennsylvania system we are.

Q. Is not that a well-recognized part of their system?

A. From Louisville to Cincinnati?

Q. Yes.

A. Yes; we are running over that.

Q. Then you are running over all the lines of railroads mentioned in the original contract except four, which form part of the Baltimore and Ohio system; is that not so?

A. I could not answer that question without having the list of contracts before me.

Q. Your best present judgment?

A. So far as the lines that are now in the Pennsylvania system that you have stated, my judgment is clear about. So far as the lines referred to on the Baltimore and Ohio, I am clear that we are not operating those. Whether there are more than that or not I am unable to answer, unless I should have the paper before me.

Re-examination by Mr. BULLITT:

88 Q. You were asked, in answer to some of Mr. Johnson's questions—you made a statement as to a meeting that occurred between Mr. Bingham, Mr. Biddle, and yourself at the Windsor Hotel. When was that meeting?

A. That was about the 30th of March. I refreshed my recollection by the hotel register.

Q. Without asking you to go through the whole conversation, for I think you gave the substance of the conversation, if you did not I would like you to repeat, but I think you did. Did you?

A. My answer there would state that. I cannot recollect.

Q. I would ask you to state in short, without going into all the reasons, all that occurred. What was the request that Mr. Bingham and Mr. Biddle made of you?

A. That I should consent to cancel the modified lease that they had executed and delivered.

Q. And the ground on which they asked it was what?

A. That their stockholders—that they had had one meeting, I think; yes, a meeting of stockholders, and that they were endeavoring—some people among the stockholders were endeavoring—to make trouble, and that they talked about personal liability of the directors and of the president; that it would be a great accommodation to Mr. Bingham if I would cancel that lease, and he thought there would be no difficulty then in getting the stockholders at the annual meeting to ratify a similar document, and my reply to them was as I stated in my previous answer.

Q. You spoke of an interview with Mr. Stevens, or did you? I do not recollect whether you mentioned—you have not given any testimony about the interview you had with Mr. Stevens, have you?

A. I believe not.

Q. State, if you please, what occurred at that interview with Mr. Stevens in June of 1885.

Mr. JOHNSON: I have not asked anything about that in cross-examination.

The WITNESS: After the delivery of what paper?

Mr. BULLITT: After the delivery of the modified lease.

By the COURT:

Q. Did Mr. Stevens call on you after that?

A. I came on from Chicago by virtue of some correspondence with Mr. Stevens, and met them at the hotel, and stated that I would be glad to lay before the new board of directors all the facts that had been laid before the old board, so that they could understand it thoroughly. We discussed the whole matter for some time—perhaps two hours—and I then stated to Mr. Stevens, or Mr. Stevens said something to me on the question. Mr. Stevens asked me something about the modified lease.

Q. The terms on which you held it or got it?

A. I stated to Mr. Stevens, as I stated in my testimony yesterday—

I do not know whether I spoke of this same — in my testimony yesterday—that the modified lease——

The COURT: You spoke of this yesterday.

By Mr. BULLITT:

Q. I do not think you spoke fully. Go on and state.

A. That the modified lease I regarded as binding on the Central Transportation Company after it was delivered, and for reasons I gave him in full at the time; that I would be glad to have him take every pains to get——

89 Q. Did you say anything at that time about litigation, or about forcing him into litigation, or not giving away your defense? If so, state what you said.

A. I do not remember definitely what was said on the subject of litigation. It is not my habit to talk about litigation. I am not a natural litigant, and if Mr. Stevens said I was going to force him into litigation I undoubtedly demurred to that—did not want any litigation; that it would be very unfortunate for both companies.

By the COURT:

Q. What he did say was that you replied to him you would not give them your line of defense.

A. I do not remember having made such a remark as that.

By Mr. BULLITT:

Q. Do you know anything about the patent rights that were assigned to your company?

A. Yes, sir; the patent rights that were assigned under that contract have all expired by limitation.

By Mr. JOHNSON:

Q. Of course it was known when the contract was made for ninety-nine years that the patent rights would run out long before the lease, was it not?

A. Patent rights do not run ninety-nine years.

Mr. DICKSON: We now desire to renew our offer as made on pages 142 and 143 of the notes, stating that the evidence already in of what passed between the parties was the evidence of the election upon which we rely.

(Objected to.)

The COURT: For the reasons stated yesterday the court sustains the objection upon the ground that there is no evidence of an election prior to the commencement of this suit, either to return the property rented and held or to pay over the net earnings referred to in the contract in case a new contract was not agreed upon by the parties—no evidence that would justify the jury in finding such an election.

(Exception by defendants.)

HORACE PORTER, having been duly sworn, was examined as follows:

By Mr. BULLITT:

Q. Where do you reside?
A. City of New York.
Q. What is your present occupation?
A. Vice-president of the Pullman Palace Car Company.
Q. How long have you been in that position?
A. I have held that position since the year 1872.
Q. You were formerly in the army?
A. Yes, sir.
Q. When did you first come to Philadelphia in reference to the negotiations between the Pullman Palace Car Company and the Central Transportation Company?
A. At least two years before the making of the modified lease.
Q. What was your object? I do not ask you to state what occurred, but just state what the purpose was in coming.
A. It was to consult with the officers or directors of the
90 Central Transportation Company, in view of the fact that the Pennsylvania contract was to expire soon, and that some arrangement should be made with the Central Transportation Company previous to that expiration.
Q. How often did you come to Philadelphia for that purpose between that time and the latter end of February, 1885?
A. Well, I should say thirty times at least.
Q. Were you with Mr. Pullman during the interviews that he had with the Central Transportation Company directors, as a general thing?
A. I was present generally; possibly at all the interviews.
Q. Will you state what your recollection is of the conversations between Mr. Pullman and the directors of the Central Transportation Company upon the question of the necessity of having a defined contract with the Central Transportation Company before making a contract with the Pennsylvania Railroad Company?
A. Mr. Pullman told them in the outset in these interviews that he had reason to believe that it would be a very difficult thing to renew the contract with the Pennsylvania Railroad Company, in consequence of statements which had been made to him by officers of that railroad company. He had no hope of making a contract on terms anything like so good as the terms of the old contract, and that in view of the provision in the original lease providing for some modification in the terms of that lease consequent upon a reduction of revenues that it would be absolutely necessary to come to some arrangement with the Central Transportation Company before he could come to terms with the Pennsylvania Railroad Company in regard to a new contract.
Q. Now, coming down to a period immediately anterior to the execution of this modified lease, and particularly referring to the meeting that it is said occurred at Mr. Lane's office on the day before, will you please state just what occurred, according to your recollec-

tion, at that time and on the day of the execution and delivery of the paper?

A. We fixed that date as the 27th of February, 1885?

Q. What date?

A. The date at which the meeting occurred at Mr. Lane's office. That is the one you refer to?

Q. That is the one I now refer to.

A. We had been informed that a meeting of the directors of the Central Transportation Company would be held at Mr. Lane's law offices on Walnut street near Seventh, I think at three o'clock on that afternoon, and within about half an hour after that time I went to Mr. Lane's office in company with Mr. Pullman, with Mr. Atterbury, who was one of our counsel, and Mr. Goodman, the superintendent of the company, came into the room a little after we had arrived, and Mr. Smith, I think, the private secretary of Mr. Pullman, also came in later. We found that the board was still in session in Mr. Lane's back office, and we were invited to sit down in the front office until the termination of the meeting, and after remaining there a considerable time the folding doors were opened, and we were invited into the back room and brought into company with the board, which had apparently just adjourned. We
91 were informed that the board had approved and ratified the modified lease. I think it was stated that it had been unanimously approved. I am not certain about that. We got into conversation with the different members of the board, and during this conversation it was stated that there ought to be an insertion made in the modified agreement or lease—I do not recollect the words that were proposed, but to the effect that it should not be binding until ratified by the stockholders of the Central Transportation Company, and this led to some conversation on the part of Mr. Pullman, principally, and he stated at great length and very emphatically that he was to decide the next day as to whether he would accept for the Pullman Company or reject definitely the contemplated new contract with the Pennsylvania Railroad Company; that he was to give an answer the next day to Mr. Roberts, the president of the Pennsylvania Railroad Company, as to whether he, Mr. Pullman, would accept or reject finally the contemplated new contract with the Pennsylvania Railroad Company, and in view of that he must first have a definite and valid and binding agreement with the Central Transportation Company—he could not take a conditional one—and after some discussion that seemed to be dropped on their part; they did not urge it any longer.

By the COURT:

Q. What was said on their part?

A. Well, I was trying to think who it was—which director first suggested this to Mr. Pullman. I think it was Mr. Lane, but I will not be positive, and it was argued for some time.

Q. But you do not remember that it was said in answer to the observations of Mr. Pullman?

A. I cannot recollect the words that were used, except that they

repeated that they would like to have a stipulation to the effect which I have stated.

By the COURT:

Q. Then and there the subject was dropped?

A. With that the subject was dropped. Mr. Pullman asked at this interview if he could have an executed copy of the modified lease, giving as a reason, I think, that he had to give this answer to Mr. Roberts the next day, and some one said that it could not be executed then; that the seal of the company was in the possession of the secretary and treasurer, Mr. Cottringer, and was in his office in West Philadelphia. It was agreed before we left the room that the officers should meet Mr. Pullman at the Continental Hotel about nine o'clock the next morning, and Mr. Cottringer stated he would have the seal of the company there, and Mr. Bingham said he would be there for the purpose of executing the modified lease.

By Mr. BULLITT:

Q. We will come to the next day. Please state what occurred the next morning.

A. At the Continental Hotel?

Q. Yes; who was present and what occurred.

A. The next morning, which was Saturday, I was in Mr. Pullman's room at the Continental Hotel.

Q. Room No. 20?

A. I do not recollect the number of the room. It was a
92 parlor with a bed-room adjoining. There were present Mr. Pullman, Mr. Bullitt, counsel; Mr. Atterbury, one of the counsel of the Pullman Company; Mr. Goodman, the superintendent of the Pullman Company; and Mr. Smith, the private secretary of Mr. Pullman. There came into the room Mr. Bingham, Mr. Lane, and Mr. Cottringer. Mr. Cottringer brought with him the stamp for affixing the impression of the seal of the Central Transportation Company. After some interchange of words, my recollection is that Mr. Lane, who had been chairman of the committee appointed by the board of the Central Transportation Company to conduct these negotiations with the Pullman Company looking to a modified lease, and was also, as I understood, acting as counsel for the Central Transportation Company, took a copy of the modified lease in his hand, and said to Mr. Pullman, "I still think we ought to insert here," pointing to some particular part of the instrument, "a stipulation"—I do not recollect the words he suggested—but to the effect that this is not to be binding until ratified by the stockholders. Mr. Pullman then, with some little impatience, if I recollect, in his manner, stated even more emphatically perhaps than the afternoon previous, that he could not accept any conditional modified lease, and wondered how any rational business man could be expected to bind himself for fifteen years to a contract with the Pennsylvania Railroad Company, a most exacting one in all its particulars, from which he had no prospects of deriving a net revenue even equal to this $66,000 proposed as rental in the new lease, and

this by a conditional contingent agreement with the Central Transportation Company with a provision by which it might be repudiated and which would leave the Pullman Company in this very awkward and embarrassing condition. That was the substance of the statement, and several in the room took part. I think Mr. Atterbury had something to say to that effect, and Mr. Bullitt. After some discussion in this matter further Mr. Lane went to Mr. Bingham and I think they had some conversation, and Mr. Bingham, then on the centre table, in the middle of this parlor, signed his name to the modified lease. Mr. Cottringer, the secretary and treasurer, then took the stamp and affixed the impression of the Central Transportation Company's seal and attested it, and gave it to Mr. Bingham; Mr. Bingham gave it to Mr. Pullman. I recollect he stood there for a time holding it in his hand. That was the substance of that interview, as near as I can recollect it.

Q. Was anything said farther than you have stated about any conditions or contingencies in reference to the delivery, that you can now recollect?

A. Nothing whatever, according to my best recollection, except the interview which I have in substance stated.

Q. Was there any such conversation as this, or did Mr. Bingham make any such statement, or Mr. Pullman? This is the testimony of Mr. Bingham (reading from testimony): "The lease was lying on the table; Mr. Lane read it; I didn't read it. He approached Mr. Bullitt, and he said, 'I see nothing in here about the approval of the stockholders.' Q. Who said that? A. Mr. Lane. Mr. Lane was the attorney of the Central Transportation Company; he
93 was president of the Pullman committee and one of the directors. He said to Mr. Bullitt, 'There is nothing in this lease about the approval of the stockholders.' By the COURT: Q. That is in the modified lease? A. Yes, sir; in what we called the modified lease. Mr. Bullitt's reply was, 'No.' Mr. Lane said, 'I will introduce it,' and he approached the table—a short, small table—when Mr. Pullman said (that is what I want to call your attention to), 'No; that is not necessary to do that; don't spoil it. I will take the chances of the stockholders approving it.' I think he added that 'if they are sensible people of course they will approve it.'" Was that said by Mr. Pullman in your hearing?

A. I heard no such language as that from Mr. Pullman.

By the COURT:

Q. Did you hear him say anything about taking the chances at all?

A. Mr. Pullman said this in that conversation. He said, "I am prepared to stand on this modified lease as it is and I regard it as a valid agreement."

By Mr. BULLITT:

Q. Was there anything in that conversation, or do you recollect hearing anything in that conversation, about the advice of counsel?

A. Mr. Pullman stated that he had been advised by the general counsel of the Pullman Company before coming to Philadelphia that that would be a valid instrument as it stood.

Q. If executed by the directors?

A. In other words, that the directors had absolute power to execute it, and that he would stand on that and make his contract with the Pennsylvania railroad.

Q. Did you afterwards go with Mr. Pullman to the Pennsylvania railroad office?

A. I went immediately after this conversation at the Continental Hotel with Mr. Pullman to the office of Mr. Roberts, the president of the Pennsylvania Railroad Company, for the purpose of accepting the contract with the Pennsylvania railroad, and Mr. Pullman informed Mr. Roberts officially that the Pullman Company accepted its new contract with the Pennsylvania Railroad Company, which was then printed in galley proofs.

Q. Do you know when the Pullman's Palace Car Company commenced operations with the Pennsylvania Railroad Company under its new contract?

A. They commenced immediately to operate under the terms of the new contract.

Q. And have been operating so ever since?

A. Ever since.

Q. Were you present at the interview which had been referred to as having taken place between Mr. Bingham and Mr. Pullman at the Windsor Hotel and Mr. Biddle?

A. I was.

Q. Without going into all the details please state what Mr. Bingham and Mr. Biddle wished Mr. Pullman to do and what Mr. Pullman's reply was.

A. Mr. Atterbury and I accompanied Mr. Pullman to the Windsor Hotel and there met Mr. Bingham and Mr. George
94 Biddle, who seemed to be acting as counsel for him, they stating, Mr. Biddle doing the principal talking, they came over to urge Mr. Pullman to consent to a cancellation of this modified lease. We expressed surprise at such a request as that, and Mr. Pullman asked them why they made such a request, and reminded them that on the strength and the good faith of that agreement he had entered into a most important contract with the Pennsylvania Railroad Company for fifteen years, and asked them the reason for making such a request. They stated generally that there had been a stockholders' meeting in the early part of that month, and there had been a good deal of confusion and criticism, and they thought they might use their efforts and would work for the ratification of an instrumentof this kind at the annual meeting of the stockholders. Mr. Pullman at once declined to be a party to breaking this modified lease on the part of his company, and after an interview, probably of three hours, the gentlemen left.

Q. Were you present at an interview which occurred between Mr. Pullman, Mr. Stevens, Mr. Brook, and Mr. Obdyke that has been referred to by those gentlemen, in June, 1885?

A. I was present at such interview in June, 1885, at the Continental Hotel.

Q. Do you recollect that any such language as this was used at that meeting by Mr. Stevens to Mr. Pullman: "Did you not know that that lease was of no avail unless it was confirmed by the stockholders as per their resolution?" to which Mr. Pullman replied, "Yes; but I take my chances on that." That was the answer to that particular question. Did anything of that sort occur?

A. There was a conversation between Mr. Pullman and Mr. Stevens on that subject. My recollection is that the subject was introduced by Mr. Stevens, and Mr. Pullman said, "I can afford to stand on that agreement; I can take my chance of that being a valid instrument; I have been advised so, and I have always believed it is."

By the COURT:

Q. When was that?

A. That was in June, 1885, at the meeting in the Continental Hotel. Mr. Pullman and his private secretary, Mr. Smith, and myself were in the room.

By Mr. BULLITT:

Q. I asked you whether you heard Mr. Pullman say yes to the question put to him as testified to by Mr. Stevens, as to whether Mr. Pullman was not aware that the modified lease that he spoke of had to be submitted to the stockholders for their approval before it was binding.

A. Mr. Stevens did ask a question, substantially that question, and Mr. Pullman, according to my best recollection, stated in reply what he had stated fifty or sixty times previously to other parties. He did use the word "chance," but he could stand on that; he could take the chance of that being a valid agreement; that he believed it was.

Q. Did he give his reasons at that time?

A. That I can't recollect at that particlar meeting.

Q. Was there anything said by Mr. Pullman to the effect, in language, that he was willing to take the chances of that agreement being approved by the stockholders?

A. He certainly said nothing of that purport in my hearing.

95 Q. Did you hear all the conversation?

A. All the conversation. I was sitting very close to him.

Cross-examination by Mr. JOHNSON:

Q. I understood that you had long negotiations with the old board of directors concerning this thing?

A. We had.

Q. Extending over a considerable part of the year?

A. Yes, sir.

Q. And during all those negotiations you dealt with the full knowledge of the resolution of the stockholders which had elected this board, requiring their approval of a modification, did you not?

A. I did not hear that resolution until a very late stage of the negotiation.

Q. We will modify it to that extent. Before the negotiations were closed you had heard of a resolution of the stockholders which had elected this board requiring their approval of the modification?

A. I heard of the resolution directing it to be submitted to them for their approval.

Q. Did any member of the board of directors at any of the interviews or during any part of the negotiations express any intention to dispense with that approval; if so, in what language did such director couch such intention?

A. I heard no one express any such intention.

Q. In the final matter, when the lease was actually executed, Mr. Pullman did say, speaking of the stockholders and of their rights in the matter, that he would take the chances on them?

A. Take the chance of the validity of that instrument.

Q. Of the stockholders' right to control it; you certainly understood that by that, did you not?

A. No; I think you are giving it a different meaning from myself.

Q. What did you understand?

A. He stated repeatedly that he would take his chance upon that being a valid instrument, for the reason that the directors had the power to make it a valid instrument.

Q. But what other chance was there? The chance of the stockholders intervening, was there not? There was no other chance in it, was there? That was the game of roulette in which there was only one turn; isn't that so?

A. That was all there was in connection with it.

Q. So that at the time of the execution of that instrument this question was before you and Mr. Pullman?

A. Yes, sir.

Q. The question of the stockholders' rights?

A. Yes, sir.

Q. And the delivery of the paper was after the expression of a desire to put the proviso into the instrument itself and after Mr. Pullman said he would take the chances of it?

A. Yes, sir; it was executed after that.

96 Q. Did any officer of the Pullman Company sign the paper there?

A. They did not.

Q. So that the only thing that was then and there done was that one of the parties to the contract executed it; is not that so?

A. Yes, sir; that is so.

Q. And before the other party to the contract—that is, Pullman—had executed it, which by the letter we see could not have been before the 10th of March, because it was sent to Chicago, and then before that was done you were aware that a call was out for a meeting of the stockholders of the Central Transportation Company, convened to determine whether they would approve this agreement or not, were you not?

A. May I state the reason why it was not executed on the part of the Pullman Company?

The COURT: You may state that afterwards. Answer the question first.

A. I have forgotten when I first heard that there was a special meeting of the stockholders called. I can't recollect exactly. I suppose soon after the call was issued.

Q. By chance I mean your best judgment on it. Is it not the chance that before your company had executed that agreement the president and vice-president were aware that the stockholders had been called together by the directors to determine whether they would approve that instrument or not?

A. I do not know when that was executed by the Pullman Company.

Q. The tenth of March we may take, because there is the date of the letter?

A. No; that was forwarded to them.

Q. Then, instead of the execution, say the delivery in the mails. To make the question before the delivery by your company, were you not aware of the fact that the stockholders had been called together by the directors of the company to determine whether or not they would approve of this agreement? Is not that your best judgment?

A. To that I must reply that I do not know. The principal office of the company is in Chicago and I am in New York.

Q. Take the 10th of March as a fixed date. Before the 10th of March, for that is the date when it was made, were you not, the vice-president of the Pullman Company, aware of the fact that a call was out for a meeting of the stockholders of the Central Transportation Company on the 18th of March to determine whether or not they would approve of that agreement?

A. I must state again that I do not know what time I learned of the call for this meeting; I cannot say.

Q. Maybe I can help you. The 18th of March was the date of the meeting?

A. Yes, sir.

Q. You of course knew when that meeting was assembled?

A. Yes, sir.

Q. Is it not your best judgment that you knew one or two weeks at least before that meeting of the call for it?

97 A. I think it is likely.

Q. You spoke of an interview at the Continental Hotel with Mr. Stevens. You remember the one to which I allude?

A. Yes, sir.

Q. Is it not a fact that at the time of that interview no agreement had been actually executed between the Pullman Company and the Pennsylvania railroad?

A. I do not think that it had been formally signed by the Pullman Company.

Q. You are familiar with this (showing agreement to witness)?

A. Yes, sir.

Q. The agreement that was signed, is it exactly as those two agreements dated the 26th of January are printed? Weren't there modifications in that?

A. You mean the proof of the agreement as we agreed upon with Mr. Roberts on the 28th of February?

Q. Yes. Those are the papers of the 26th and 27th of January. I ask whether the agreement that was ultimately executed was just as it is written there, or whether there were modifications in it.

A. According to my best knowledge and recollection, they are identically the same. Let me understand you. You are speaking of the similarity and the identity of the proof which we had on the 28th of February which we agreed to with Mr. Roberts and we regarded as a finality in the consummation of the contract?

Q. Yes.

A. These documents were signed in the summer. There was nothing left, according to my recollection, to be done except to make a schedule of the lines that were to be covered by this—a schedule of certain cars, matters of detail between our respective officers and superintendents, to be put on the line. There was a printed list of the rates to be charged on all the cars on these lines and they were attached to it, but I did not know of any changes in the text of the agreement.

Q. Then those things to which you have referred were very important parts of the agreement, were they not?

A. Mere details left to our subordinate officers.

Q. Still, details about which the subordinate officers differed, like in a freight fight, are they not?

A. We save trouble by making them agree to those details.

Q. Yet there were points of detail which, in application, made large differences in figures, in grand totals, that were left to be arranged after the 27th of February. Is not that so?

A. No; I think it would make no difference in dollars and cents in those details.

Q. All lines over which the agreement extended. Was not that an important matter?

A. They were all understood. It was only scheduling them—having the schedule printed out.

Q. The rates to be charged were important matters, were they not?

A. We took the rates that had existed for years.

Q. Did you agree in your agreement to take those rates?

A. We did, verbally.

98 Q. But in the text of this agreement you did not agree upon them, did you?

A. It was not specified that they would be the usual rates.

Q. And the cars that were to be put on; were not those matters that would be important in the details—very important?

A. They would not affect the revenue from the road.

Q. What made this very long delay from the 27th of February down until certainly late in June?

A. I will tell you exactly why. Large bodies move slowly, and

Mr. Pullman went off West traveling about there, and the subordinate officers, who are busy, and the people who took up the printing of these schedules, the arranging of them—and this was printed in proofs and then had to be printed out carefully for signature—and they went out to Chicago, I think, when Mr. Pullman was away, and after awhile they came back executed on the part of the Pullman Company, and Mr. Roberts, if I recollect, was away on his summer vacation, and they remained there some time.

Q. Still, that comes down to June before that vacation came, and we started in February, when it is anything but summer here in Philadelphia; I don't know how it is in New York.

A. I am simply stating facts that occurred in regard to it.

Q. Then those large bodies that move so slowly there, after everything had been agreed upon moved pretty rapidly on the 27th of February, did they not?

A. Yes, sir. Mr. Roberts demanded a definite answer. We were on a short haul. I am looking out for an opportunity to make my explanation. You asked me what you seemed to want to know, if you didn't ask it, why the Pullman Company did not execute the modified lease that morning when it was executed. The central office of the Pullman Company is in Chicago. The secretary is there and the seal of the company is there. It is a matter of importance and never goes out of the custody of the officer in Chicago, so that these had to be sent out to Chicago to be attested by the secretary, and to have the seal affixed to them to make them legal. Mr. Pullman did not go back. I have forgotten about his movements.

Q. I was somewhat concerned with the fact that they hadn't done it, but of course I am quite willing to take your reason.

A. That is the reason.

Q. Was there another explanation you wanted to make? I thought there were two explanations.

A. No; that is all unless you can suggest something.

Q. I am trying to. I will tell you what I want you to explain. If you thought that the board of directors of the Central Transportation Company had unqualifiedly voted to make that agreement, why — you thought they were endeavoring to put something in it like a proviso requiring the assent of the stockholders?

A. That was their affair.

Q. Still, they were dealing with two men of very unusual business capacity and good judgment. What was your judgment on
99 that? If you supposed that the board of directors of the Central Transportation Company had unqualifiedly and without any reference to the stockholders agreed to that lease, why did you think that members of the board after they adjourned were endeavoring to put that proviso in?

A. I never attempted to interpret their motives. They did not state the reason.

Q. Didn't you, as a man of the world and of affairs, infer from that that they were acting in accordance with the resolution of the stockholders requiring their approval?

A. It never occurred to me for a moment, because the only in-

formation I had was that that had been ratified and approved by their board unanimously as it stood.

Q. And no suspicion at all came across your mind when they were wanting to insert this proviso?

A. It did not.

Q. The discussion, as I understand it, was not as to whether there should be a reference to the stockholders, but whether in the agreement itself, which was then and there physically before you, there should be physically inserted a proviso to the effect of requiring approval; that was the discussion?

A. You are quite right.

Q. And no discussion as to whether or not the directors had waived the requirement of the stockholders put upon them?

A. No, sir.

Q. Who apprised you of the fact that the directors were going to meet at the office of Mr. Lane?

A. I think that Mr. Atterbury informed Mr. Pullman and me. I will tell you the reason for my thinking so. He had been in connection with some of their officers drawing up this modified lease and heard from them that they were going to have a meeting.

Q. At any rate, that is your best recollection of how you came to go there?

A. Yes, sir.

Q. Do you know in whose possession that lease was when you, Mr. Atterbury, and Mr. Pullman went to Mr. Lane's office—in the possession of one of your party or in possession of the board of directors?

A. In the possession of the board of directors, for we got there a half an hour at least after they had assembled and did not communicate with them until after their meeting.

Q. Do you know who said it to them?

A. I do not.

Q. Had you seen it before it went to them?

A. I think I had.

Q. And not long before your meeting at Mr. Lane's office?

A. No; it could not have been more than a day or two before.

Q. This matter about actually and physically inserting the proviso in the lease was one, as you recall it, that at both the meetings was brought up by people on the Central Transportation Company's part?

A. At both meetings.

Q. Were you aware antecedently to your going to Mr.
100 Lane's office of this consultation by Mr. Pullman with counsel of the company concerning the power of corporations or this corporation with reference to this agreement?

A. I was not. I heard Mr. Pullman state that for the first time at that meeting.

Q. You have said, alluding to the conversation with Mr. Stevens at the Continental, that Mr. Pullman then and there said what he had fifty or sixty times said, that he would take the chances. To whom had he fifty or sixty times said he would take the chances, and what was the necessity of his saying it?

Mr. BULLITT: I do not think he said it in that way.

The WITNESS: I think pretty nearly that. That was an expression of a general fact; that Mr. Pullman had reiterated that.

Mr. JOHNSON: As I recall his statement, it was that Mr. Pullman said to Mr. Stevens at the Continental Hotel what he had said fifty or sixty times before, that he would take the chances, and I am now asking the witness to whom he had said fifty or sixty times before, and what was the occasion of that very constant repetition of his idea of taking the chances.

The WITNESS: It was said to us in discussion, the officers of the company; it was said to the directors of the Central Transportation Company as well as Mr. Stevens.

By Mr. DICKSON:

Q. The old directors?

A. The old directors.

By Mr. JOHNSON:

Q. Then the question of the power had been a subject of discussion among yourselves?

A. That had been mentioned.

Q. And I suppose what raised that discussion was the existence of this resolution of the stockholders, which you knew, requiring their approval?

A. Perhaps it was.

Q. And is it not your judgment that it was because of Mr. Pullman's knowledge that the stockholders had required their approval of the modification that he consulted the general counsel at Chicago with reference to the power of the directors?

A. As I have stated, I knew nothing about his consulting the general counsel, only I heard him state it in the meeting.

Q. Then you, a vice-president of the Pullman Palace Car Company, did know at the time this agreement was delivered to you—with a knowledge of the resolution of the stockholders that had been passed—did know you were taking some chance with reference to the stockholders' action in the matter, did you not?

A. We contended that we were not taking chances with it, that it was valid.

Q. You contended you were not taking the chances, because you relied on the opinion of counsel?

A. No; I should be very sorry alone to rely on that, from my business experience.

Q. Let me see how far your experience serves you. Had you
101 ever in your life before dealt with a corporation in a matter of this magnitude to the corporation with which you dealt where there had been a resolution by the stockholders requiring their approval of what the directors did?

A. I do not recollect a similar case.

Q. Experience does not help you. Was there anything besides the opinion of counsel that made you think there was no chance?

A. General experience with corporations for a number of years.

Q. Had you any general experience with corporations where there lay in the threshold of the action by the directors this obstacle of a resolution of the stockholders requiring their approval?

A. I had had such experience, and in a very important case, one that has been referred to—that is, the lease of the Metropolitan, in New York, the Manhattan Company.

Q. Had there been a resolution of the stockholders in that case requiring the approval of the directors' action in support of what the directors did.

A. No; but the directors made the lease. I answered to that that I did not know of an exactly similar case to this.

Q. Did you ever know of a case in which there was this element of a resolution by the stockholders at the annual meeting which elected the board requiring the board to submit their action to their approval? That element was out of any case in your experience?

A. Yes, sir; in that particular form.

Q. Is it not a fact that when you, the vice-president, at the Continental Hotel saw Mr. Pullman take away that paper executed you were acting with the knowledge that there was the chance taken of what the stockholders had the right to do?

A. If I supposed that we were taking chances on that I should certainly have objected to closing the contract with the Pennsylvania Railroad Company.

Q. But yet Mr. Pullman said in words, "I will take the chances." Don't you know it was his word that was used?

A. But it was not my words.

Redirect examination by Mr. BULLITT:

Q. I do not know that it was so intended, but in order that there may be no obscurity about it, did you understand that Mr. Pullman would take the chance of the stockholders' approval or did you understand that he would take the chance of the law being that the directors had the power to execute the lease?

A. Oh, most distinctly he said he would take the chances of that being a valid instrument, and believing in the power of the directors to make it.

Q. Something was said to you by Mr. Johnson about this lease with the Pennsylvania railroad not providing the rates or charges. Article X is what you referred to as being the usual rates or charges, is it not? I think you said that there was nothing in the agreement about it?

A. Yes; I had overlooked the fact that this was distinctly stated in the agreement in regard to the rates.

102 Q. Then provision was made in the contract for the mode of arriving at the freights and charges?

A. Yes, sir; and the schedules were printed out in accordance therewith.

GEORGE M. PULLMAN, having been recalled, was examined as follows:

By Mr. DICKSON:

Q. You have spoken about Mr. Roberts' report to his stockholders at the meeting. Did you have any conference with him with regard to that report before the meeting?

A. I did.

Q. Did you see it at or immediately after the meeting of the stockholders?

A. I saw the report immediately. I saw this copy immediately after the meeting of the stockholders. Mr. Roberts stated to me it would be necessary——

Mr. JOHNSON: Do not read it.

Mr. DICKSON: I saw Mr. Roberts on Monday, who told me he was not going away and he would come here. Upon going there this morning—to his office—I found he was away. I offer this report of the Pennsylvania Railroad Company in evidence.

(Objected to.)

The COURT: Renew the offer at another time.

(Offer withdrawn until close of testimony.)

CHARLES N. ATTERBURY, having been duly sworn, was examined as follows:

By Mr. BULLITT:

Q. Where do you reside?

A. In the city of New York.

Q. What is your occupation?

A. Attorney and counsellor at law, in the city of New York.

Q. How long have you been counsel of the Pullman Palace Car Company?

A. I never have been regular counsel for the Pullman Palace Car Company. In the early part of December, 1884, I was employed by Mr. Pullman as special counsel in the matter of the preparation of the contracts with the Pennsylvania Railroad Company and also — consideration and assistance in the matter of the arrangement for a modification of a lease with the Central Transportation Company, to which reference has been made here.

Q. Did you come to Philadelphia in reference to these two matters?

A. I came to Philadelphia early in the month of December, 1884, and was in Philadelphia, both with and without Mr. Pullman, from that time until the end of the month of February, at which time the modification of the lease with the Central Transportation Company had been made.

Q. About how often did you come?

A. I might say that I was here the greater part of that period, from day to day; sometimes for two or three days at a time, and then again at intervals of two or three days.

Q. How often were you here with Mr. Pullman?

103 A. I should suppose I was here with Mr. Pullman fifteen or twenty times at least during that period; perhaps more.

I was here, I think, about every time that he was here during that period.

Q. How many of the meetings between Mr. Pullman and the officers of the Central Transportation Company did you attend?

A. I attended, I believe, all of the meetings between Mr. Pullman and the Central Transportation Company officers during that period.

Q. What was the subject of the negotiation between them?

A. The subject of the negotiation was the modification of the Transportation Company lease, in view of the necessity of either surrendering the lease or of modifying it by reason of the expiration of the remaining Pennsylvania railroad contract in the latter part of the month of January, 1885; that question of the expiration of the Pennsylvania railroad contract was the moving spirit in all these negotiations.

Q. On what ground or why was it?

A. For the reasons, as stated at all these interviews, repeated over and over again, that with the expiration of that contract went substantially the last of the original or renewed contracts embraced in the Transportation lease, and that upon such a condition of things happening the Pullman Company, in case it failed to renew the contract with the Pennsylvania Company upon terms which were satisfactory to the Central Transportation Company and itself or acceptable to the Central Transportation people, it would be obliged to surrender the Transportation lease and the property demised.

Q. How often did you hear the question discussed between Mr. Pullman and the directors of the Central Transportation Company as to the necessity for the stockholders of the Central Transportation Company to approve of the modified lease?

A. To the best of my recollection, that question was never raised or discussed by me or in my presence until toward the close of the negotiation and shortly within and a very few days before the execution of the paper. I think that was the first time that I knew of the resolution of the stockholders to which reference has been made.

Q. Coming down now to the meeting which took place upon the 27th of February, or suppose we fixed the dates, have you examined to see what was the actual date upon which the meeting took place at the Continental when the matter was concluded?

A. Yes, sir. Before coming in here I examined the note book or diary in which I am in the habit of making entries daily where I am. I found that the meeting at the Continental Hotel was on Saturday morning, the 28th of February, of 1885.

Q. Therefore, the meeting at Mr. Lane's office was the day before, the 27th?

A. The day before—Friday afternoon—the 27th.

Q. Who drew this modified lease?

A. That modified lease was prepared by Mr. Lane and myself.

Q. How long were you engaged in the preparation of it?

104 A. I do not recollect whether I began the preparation of that lease on the 25th or not, but on the 26th I know that I was engaged in its preparation. The evening of the 26th I had it copied by a type-writer, and the next morning I either took it to

Mr. Lane's office or else I met him at the hotel and gave it to him for the meeting of the board of directors, which I understood was to be that afternoon.

Q. By whom were you so informed of the meeting of the board?

A. I should say Mr. Lane. I haven't any doubt but what he told me of it.

Q. You then, as I understand you, gave the draft as you had had it type-written to Mr. Lane on the morning of the 27th?

A. On the morning of the 27th.

Q. Will you please state all that occurred on the afternoon of the 27th at Mr. Lane's office at the time that the board of directors had their meeting, who was present, and what was said and done, as far as you know?

A. That afternoon we attended at Mr. Lane's office—Mr. Pullman, General Porter, after which came in Mr. Goodman, the superintendent of the Pullman Palace Car Company, and Mr. Smith, Mr. Pullman's secretary, and myself. We were ushered into the outer room; waited there for some little time; the doors were opened between the two rooms, and Mr. Lane, who threw the doors open, invited us into the room where these gentlemen were all sitting around. We went in there. I do not now recollect which one it was, whether Mr. Bingham or Mr. Lane, announced to us that the board of directors had adopted the modification of the lease as prepared. There followed some discussion as to its provisions and the business with the Pennsylvania Railroad Company—what we thought we had accomplished in this way—and during the talk, which was of a general nature, Mr. Lane proposed that we should insert in this modification a provision by which it should not be binding upon the Central Transportation Company until after the stockholders had ratified it. I objected to that. I said, "We cannot agree to that." Mr. Pullman at once spoke up and said that that was inconsistent with his position all through, and that his situation was, as he had previously advised them, that he must have that agreement executed and delivered before he could make his contract with the Pennsylvania Railroad Company, and that the making of any money on that contract depended upon the execution and delivery of this modification of the lease; that Mr. Roberts must know the following morning, and that he had agreed to meet Mr. Roberts the following morning to let him know whether or not the Pullman Company would accept and conclude the agreement with the Pennsylvania Railroad Company. I should have said that we were expecting that this agreement would be ratified, as was the case, and expected to have had it executed and delivered to us then and there, while we were waiting. I have forgotten whether it was a suggestion of mine or Mr. Lane's, or whose, with regard to its immediate execution and delivery—it does not make much difference—but the objection was made there that they could not execute and deliver it that afternoon, because the
105 seal of the Central Transportation Company, which should be affixed to the agreement, was then at West Philadelphia, in the office of the secretary, Mr. Cottringer; but it was agreed that, as Mr. Pullman had to meet Mr. Roberts the following morning as

early as eleven o'clock, that Mr. Cottringer would be at the Continental Hotel that morning at nine o'clock, Mr. Bingham would be there and Mr. Lane would be there, and that then the contract would be executed, signed by the officers, and the seal attached and delivered. With that we went off satisfied that that would answer our purpose.

Q. Now come to the next morning. Please state what occurred then.

A. The following morning at nine o'clock, or very shortly after, we all gathered in the parlor in the Continental Hotel. There were present Mr. Pullman, General Porter, yourself (Mr. Bullitt), myself, Mr. Goodman, Mr. Smith, Mr. Pullman's secretary, Mr. Lane, the attorney and director of the Central Transportation —, Mr. Bingham, and Mr. Cottringer, with his seal. I do not now recall anybody else.

Q. Please state what occurred.

A. Either Mr. Lane or Mr. Bingham had with them the typewritten agreement which the board had adopted the afternoon before. Mr. Cottringer was there with his seal. We were talking about the matter, as we were all very much interested in a general way, and Mr. Lane said to me, "I think we ought to have in that—I think that we ought to have in that, if you will agree to let us put it in, a clause providing that this contract does not become obligatory upon the Central Transportation Company until it has been ratified by the stockholders." I said, "Mr. Lane, we cannot agree to that; we can't think of it for a moment;" and Mr. Pullman, who was standing by, happened to overhear this, and he came up at once and he at once entered in the conversation. I think it was between the three of us, near the window. He said, "We cannot take this condition of affairs. We have got to give our answer this morning to the Pennsylvania Railroad Company, and we have got to give it upon a contract executed and delivered by the Transportation Company. Unless we have that contract we cannot go to Mr. Roberts and accept of the Pennsylvania railroad contract;" some talk of that sort, and Mr. Lane seemed to be anxious to have some clause of that kind inserted as a qualification of the instrument, but he saw that we would not and could not agree to it, and Mr. Lane then turned, I think, to Mr. Bingham and said, "Sign the contract." Mr. Bingham signed the contract, Mr. Cottringer put the seal to it, attested the signature, and it was delivered to Mr. Pullman by Mr. Bingham.

Q. Did Mr. Pullman, in that conversation, state to Mr. Bingham, either in substance or in fact, or literally, that he would accept that contract subject to the approval of the stockholders?

A. He did not make any such statement. On the contrary, I heard him say several times, both to Mr. Lane, to Mr. Bingham, and to all of us, that he would not accept the contract—that he could not accept the contract—except it were a complete contract in
106 itself, without any contingency or condition, without any provision in it as to the necessity of its ratification by the stockholders.

Q. I am speaking of that morning.

A. That morning.

Q. Mr. Bingham has given this testimony: "Mr. Lane and I came in. The lease was lying on the table. Mr. Lane read it. I didn't read it. He approached Mr. Bullitt and said, 'I see nothing in here about the approval of the stockholders.' By the Court: Q. Who said that? A. Mr. Lane. Mr. Lane was the attorney of the Central Transportation Company. He was the president of the Pullman committee and one of the directors. He said to Mr. Bullitt, 'There is nothing in the lease about the approval of the stockholders.' The Court: That is, in the modified lease? A. Yes, sir; what we called the modified lease. Mr. Bullitt's reply was, 'No.' Mr. Lane said, 'I will introduce it,' and he approached the table—a short, small table. Then Mr. Pullman said, 'No; that is not necessary, to do that; don't spoil it; I will take the chances of the stockholders approving that;' and I think he added that 'If they are sensible people, of course, they will approve of it.'" I want to ask you whether on that occasion Mr. Pullman said, "No; that is not necessary, to do that; don't spoil it; I will take the chances of the stockholders approving it." Did Mr. Pullman say that or anything like it?

A. Mr. Pullman neither said that or anything like that; but, as I have already said, he said directly the contrary; that he must have that agreement unconditioned by any provision with respect to ratification by the stockholders.

Q. Was there any lapse of time—I mean any considerable lapse of time—between the time at which Mr. Pullman thus expressed himself and the time at which the paper was signed, sealed, and delivered?

A. The entire conversation that I have spoken of was all within the space of an hour. This remark of Mr. Pullman's to which my attention has been called, the remark that I heard, was within a very few moments before the execution of the paper.

Q. The execution of the paper, then, followed immediately after Mr. Pullman's declination to allow those words to go in?

A. Yes, sir; Mr. Pullman refused to have anything go into the paper which made it a conditional instrument.

Q. Did you go with Mr. Pullman to the Pennsylvania Railroad Company's office?

A. As soon as this paper was delivered I went with Mr. Pullman and General Porter down to the Pennsylvania Railroad Company's office.

Q. When there what occurred?

A. I was not present at the interview between Mr. Pullman and Mr. Roberts. Mr. Pullman went upstairs to notify Mr. Roberts of the acceptance of the contract. I went into the office of Captain Green and Judge Logan, having with me the last print of the contract. Judge Logan was the counsel of the Pennsylvania railroad; Captain Green, one of its vice-presidents and specially charged with the preparation of this Pennsylvania railroad contract. It was with them that I had most of the discussion and the labor in connection with the preparation of that contract.

107 Q. Had that paper then been prepared?

A. I think that we had had put in print at that time fifteen or twenty revises of that contract, and at that time the contract had been agreed upon in all its terms and put in print, with, I believe, the single exception of the schedule of cars to which reference is made in the contract, and which schedule was to be attached to it. As I say, I was with Captain Green and Judge Logan completing the contract in that way during that Saturday. I went back to New York that evening, and on Monday morning I had received from Captain Green and Judge Logan the final print of the contract with the amendments that we made on that Saturday.

Q. When did you receive that letter (handing letter to witness)?

A. That letter I received either on Monday afternoon or Tuesday morning, I can't tell which; either Monday, the 2d of March, the Monday immediately following the Saturday, or else on the Tuesday morning following it—the 3d of March. That letter enclosed to me the last print of the contract that I have referred to.

Q. How long before the matter was finally concluded by annexing the schedules and getting the whole thing settled?

A. I can't tell you. My work in connection with the contract ceased in this revised print. The contract was then substantially agreed upon. There was nothing left, as I say, but the scheduling of the cars and the business of selecting those cars and securing their approval, inspection, and acceptance by the operating officers of the Pennsylvania Railroad Company, which was a matter which the superintendent of the Pullman Palace Car Company at once took up with the general manager.

Q. That part you had nothing to do with?

A. I had nothing to do with that; that was merely the inspection and delivery of the cars that the contract called to be inspected, selected, and delivered.

Q. Did you have anything to do with the subsequent execution of the contract or the delivery of it?

A. No.

Q. Were you present at an interview which has been spoken of between Mr. Stevens, Mr. Brook, Mr. Obdyke, and Mr. Pullman, in June?

A. No, sir.

Q. Were you present at a meeting between Mr. Bingham, Mr. Biddle, and Mr. Pullman at the Windsor Hotel?

A. The meeting to which General Porter referred in his testimony?

Q. Yes.

A. Yes, sir.

Q. Please state what occurred.

A. That meeting was had in the latter part of March; I don't recollect the exact date of it. Mr. Bingham came over in the afternoon with Mr. Biddle, as his counsel, and counsel of the directors of the Transportation Company. We met these gentlemen in the private office of the Windsor Hotel—Mr. Pullman, General Porter, and myself and Mr. Biddle and Mr. Bingham. Mr. Bingham

108 said that he had come over to ask if we would not release the directors from the contract made with the Central Transportation Company; that the stockholders were very much excited about it, referring to a meeting of stockholders had here on the 18th of March, and the conduct of which led them to feel apprehensive as to themselves as directors—whether they had not exceeded their authority as directors in making this contract with us; that if Mr. Pullman would relieve them from that apprehension and responsibility by surrendering or agreeing not to enforce that contract that he and the other members of the board who had approved of the contract would take off their coats and go to work and endeavor to secure the assent of the stockholders to the matter of the agreement. If we were unwilling to do that he did not know what might be the consequences; that he thought if we did assent to his request that they would be able to secure the approval of the stockholders; if we did not assent to it they would not feel inclined to work with the energy and the spirit that they would if they were free from these apprehensions, and they hoped they would be able to secure their assent. Mr. Pullman refused. He said he was in a position—had put his company in a position—where he could not release the contract or waive it in any way; he had assumed this obligation with the Pennsylvania Railroad Company upon the faith of that contract, and that he as trustee for his company had no right, even if it were proper for him to do so in other respects, he had no right to waive this contract and leave his company in the position it would be in under its contract with the Pennsylvania Railroad Company, and no contract with the Central Transportation Company, except the old lease, which required the payment of a rental of $264,000.

Cross-examination by Mr. JOHNSON:

Q. Then Mr. Pullman was not willing to give up this contract?
A. The modification of the lease?
Q. Yes.
A. Was not willing to give it up?
Q. Yes.
A. No.
Q. Can you, relatively to the meeting of the stockholders on the 18th of March, fix the date of this interview; was it a day or two after?
A. My recollection is it was a week or ten days after; I can't fix the date; I could learn the date if it is important.
Q. Don't you think it was before this letter of Mr. Pullman's of the 30th of March? (Letter handed witness).
A. It was the latter part of March; that is about as near as I could recall it. I don't know anything about that letter.
Q. You heard the whole conversation at the Continental Hotel at the time this paper was executed, did you?
A. I think I heard all that was said.
Q. And it is your best memory that you have told us all that was said?

A. I have told you, I believe, all that was said relatively to this thing.

109 Q. Do you recall the fact that you have failed to say a word about Mr. Pullman's remark about taking the chances?

A. I don't recollect hearing any such remark.

Q. Then, though Mr. Pullman has spoken of a remark in which he said he would take the chances, but that the chances he would take would be of the power of the board, Mr. Bingham saying that he took the chances of approval, you did not hear that part of Mr. Bingham's conversation in which he used the words at all, "I will take the chances?"

A. I have no recollection of it.

Q. Therefore, if Mr. Pullman did say that, there must have been a part of his conversation that you did not hear?

A. Yes, sir.

Q. The discussion that you heard was simply a discussion about the physical insertion in writing of a proviso about the approval of the stockholders, was it not?

A. Yes, sir; in the agreement.

Q. If you thought that the board of directors had accepted that modified lease which had been prepared without intending to require the approval of the stockholders, how did you understand the expressed desire of these directors to physically insert a proviso requiring that approval?

A. I explain it on this theory; it is a matter of opinion——

Q. I am asking you for your judgment at the time of that matter.

A. This is and at the time, if I recollect aright, was my explanation of it. There was a resolution of the stockholders of the Central Transportation Company, to which some reference has been made——

By the COURT:

Q. Did you know it at the time?

A. That I knew at the time, and I understood that these gentlemen wanted to have a clause limiting the effect of this contract or making it conditional upon its subsequent ratification by stockholders in order to relieve them from any responsibility in the execution of the paper and delivery of it, in view of that resolution of the stockholders.

By Mr. JOHNSON:

Q. Then it was your understanding at the time that the acceptance by the directors of this paper was with the desire on their part that there should be the approval of the stockholders obtained to it, was it not?

A. No; I do not answer that in the affirmative. I think they wanted to have Mr. Pullman accept that contract conditioned upon its subsequent ratification by the stockholders.

By the COURT:

Q. Are you speaking of the directors or of the gentlemen who were present on account of the board?

A. The gentlemen were directors.
Q. But were not the board?
A. All the directors are members of the board.

Mr. BULLITT: The time at which he is speaking of this thing should be called to Mr. Atterbury's attention, because you recollect one time was when the board were all present and the other time was when there were fewer.

The COURT: Mr. Johnson's question was not fully understood or appreciated by the witness. He is intelligent enough,
110 and therefore may be supposed to have understood it, but Mr. Johnson referred not simply to the gentlemen who were then present, but he referred to the actual board.

Mr. JOHNSON: Yes.

Q. What I want to get at is whether you, as a lawyer, thought that those gentlemen who were then talking with you were expressing merely their own views or what had been the action of the board when they had been assembled as a board.
A. You say "those." When do you mean?
Q. At the meeting at Mr. Lane's office after the adjournment, and at the meeting at the Continental Hotel when the paper was executed. The body was adjourned as a body when you began to talk with them?
A. I do not know whether it was adjourned or not; we were called in there and the body was all sitting around; they did not move from their seats.
Q. I thought you told us they had said they had voted upon this matter?
A. Yes; I said that, but I did not say they had adjourned. These gentlemen were all sitting there; we were called in and notified that the board had adopted that contract.
Q. You were not occupied by any subsequent actions by the board?
A. No, sir.
(The following question was then read to the witness: What I want to get at is whether you, as a lawyer, thought that these gentlemen who were then talking with you were expressing merely their own views or what had been the action of the board when they had been assembled as a board?)
A. I think I said that the only person who spoke to me, or whom I heard speak, asking for the insertion of such a provision as that was Mr. Lane, both at the board meeting on Friday afternoon and also at the meeting of Saturday morning at the Continental Hotel, when the paper was executed and delivered.
Q. Did you think he was expressing merely a desire of his own, or the desire of the previously assembled board when they had taken this action?
A. What I thought was this: Mr. Lane and I for two days had together been working over this draft of the agreement, understanding the terms of it, and Mr. Lane, as attorney as representing the company for whom he was acting, the Central Transportation Com-

pany, in behalf of that company desired to secure the insertion of such a clause.

Q. Purely his own private matters, or because it was the board's desire?

A. I cannot tell you, for I don't know whether he had any instructions from the board.

Q. But what was your judgment?

A. I have no judgment upon that. I was talking with Mr. Lane as the representative of that company; I was an attorney and he was an attorney; we had been engaged in the preparation of this agreement; the board had adopted it.

Q. Did you think for a moment, as an attorney or a man of business, that if the board had unqualifiedly accepted and adopted that, that thereafter anybody of his own motion would undertake
111 to insert a proviso not in the line of the acceptance?

A. I did not think anything about it. I know that Mr. Lane did so.

Q. But did you think then and there that he desired that to be put in, if you believed that the board had unqualifiedly accepted and approved of that paper?

A. I not only thought so, but I knew it. These two conversations with Mr. Lane that I speak of were had after that agreement had been adopted by the board.

By the COURT:

Q. The question is whether or not you understand it to be Mr. Lane's suggestion or that he was simply carrying out the resolution of the board?

A. I understood it to be Mr. Lane's suggestion. The agreement had been adopted by the board.

By Mr. JOHNSON:

Q. And you thought that the agreement had been unqualifiedly accepted by the board, and it was Mr. Lane's suggestion, entirely from his own mind, to put in a proviso to an instrument that the board had agreed to hand up before, did you?

A. I didn't think much about the position Mr. Lane occupied at that time. What I might think of it now, perhaps, would be another matter. I was simply going to try to explain myself. I want to answer your question if I can, but I don't see how I can. Mr. Lane was a director of the Transportation Company, was the counsel of that company put forward to draft with me this agreement. We had together drafted this agreement. I was notified, as I say, when we came in there—into the board meeting, Friday afternoon—that the agreement as drafted by Mr. Lane and myself had been adopted. Nothing was said about any condition or any question about it; and, as I say, then I did not attempt to distinguish between Mr. Lane as an individual and Mr. Lane as a director or as attorney of the company. He was the one I had known in the matter. I went right along with him, and such a suggestion as that

came very naturally from him. He was anxious to get the best agreement for his company he could.

The COURT: I am not sure that you get precisely what I think is in the question. I understood it to be whether when Mr. Lane made this request you understood the request to have emanated from his own thought or whether he was expressing the desire and requirement of the board.

A. I did not understand that there was any requirement or expression of the desire of the board as a board in this matter.

The court then took a recess until 2 o'clock p. m.

AFTERNOON SESSION, 2 p. m.

Cross-examination of CHARLES N. ATTERBURY resumed by Mr. JOHNSON:

Q. Prior to this meeting at Mr. Lane's office—I won't say how long prior, but prior to it—you had been acting with the understanding that the stockholders who had elected a board of directors with whom you were dealing had required that they
112 should approve of any modification that the directors might make of the lease?

A. I did not so understand.

Q. What did you understand?

A. I understood that the stockholders' resolution authorized the board to make such modifications in the existing lease as they might deem to be necessary, and then the language to report their action—I do not remember whether I quote accurately—to the stockholders for approval was not intended——

Q. You saw the resolution, did you?

A. I saw a copy of it, I suppose.

Q. Who furnished you with that copy of the resolution?

A. I can't tell you just when or how I first saw it——

Q. But antecedently to this meeting at Mr. Lane's you had had a copy of the resolution?

A. Yes, sir; I had seen it.

Q. So that whatever your interpretation of it was you were acting with actual knowledge of the words?

A. Of that resolution.

Q. Did any member of the board of directors at any time express any intention to assume the responsibility of acting contrary to that resolution?

A. I do not know of any occasion on which any member of the board assumed to act contrary to that resolution.

Q. Or contrary to it?

A. I say contrary to it.

Q. Therefore may I take it that at the time this paper was delivered you had not been apprised by any member of the board that he individually or the members collectively had agreed to dispense with the requirements of that resolution?

A. I recollect nothing that was said in regard to it at all.

Q. And then when the lease was before you, both at Mr. Lane's

office and at the Continental, there was a desire expressed to physically insert in writing a proviso making it dependent upon the approval of the stockholders?

A. Yes, sir.

Q. And that did not strike you when it was mentioned as bringing into the first case anything which had not already been brought into it, did it?

A. Yes, sir; it did, because neither ourselves or these gentlemen in our talk made any reference at all to a conditional contract. It was a contract which we were making with them—that they were making with us.

Q. But if you were aware of the resolution of the stockholders, if you had had expressed to you no intention by the directors to do anything contrary to it, when was it that you were impressed with the idea that the directors had determined to dispense with the requirements of the stockholders' resolution?

A. The first I knew of the action of the directors was on the Friday when we were called into the board meeting, and we were told by some member of the board in the presence of all of them that they had adopted the agreement which Mr. Lane and I had prepared.

Q. Was the question submitted to you during the course
113 of these negotiations and actions as to the power of the stockholders to interfere in this matter?

A. I considered that question.

By the COURT:

Q. The question is whether that was submitted to you.

A. By whom—Mr. Johnson?

By Mr. JOHNSON:

Q. By the Pullman Company or its officers.

A. I had some conference with Mr. Pullman about it. Whether it was suggested by him I do not recall.

Q. That was in connection with the submission to you then or previously of the terms of this resolution of the stockholders, was it?

A. It was previous to the adoption of the agreement by the board of directors.

Q. But I mean when you had your talk with Mr. Pullman was it after there had been submitted to you a copy of the stockholders' resolution?

A. Oh, I knew what the stockholders' resolution was.

Q. You were aware at the time almost of the making of this contract and before the 10th of March, when it was sent unsigned from Chicago, that under a call of the board of directors the stockholders were to convene on the 18th of March, were you not, to approve this matter?

A. I do not know whether I knew it at that time. I did learn before the meeting of the stockholders that there was to be a meeting.

Q. Was it any matter of surprise to you growing out of anything that had previously occurred that such a meeting had been called?

A. I do not know that I thought very much about it.

Q. There was nothing in what had been said or done previously that made it a surprise to you that such a meeting for the approval of this lease had been called, was there?

A. It did not surprise me for this reason, that I did not regard the meeting of stockholders as essential and their approval necessary to make the act of the directors in adopting this lease and directing its execution and delivery necessary.

Q. Yes, but if you had thought that the directors had delivered this paper waiving any intention to endeavor to secure the approval of the stockholders you would have been surprised, would you not, at the call of the meeting?

A. I did not understand that the directors were waiving anything in delivering us this contract.

Q. That is, that whatever duty was upon them under the stockholders' meeting you understood they did not waive—that is, you understood that the directors did not intend to waive any duty that the stockholders' resolution had imposed upon them when they executed this paper?

A. I will answer the question in my own way if you will let me.

Q. Certainly.

A. Here was the resolution of the stockholders. We were aware of it—at least I was. In my mind that resolution did not affect in one way or another the authority of the board of directors to make this contract. What they may have thought about it I do
114 not know. They executed, they adopted, and delivered the agreement in pursuance of their general authority as directors to manage the affairs of the company. That was my understanding. Have I answered your question?

Q. Yes. Was it your judgment that what the stockholders had done did not affect the board because they had no power to affect them or because you construed the resolution as not in any way limiting the power?

A. I should say both. I do not think the stockholders could control them, and I do not think the action of the stockholders that was taken did control them.

By the COURT:

Q. Do you mean you did not understand the resolution of the stockholders as intending to control the action of the directors?

A. Yes, sir.

Q. That is your construction of the resolution?

A. That is my construction of the resolution. That is my opinion.

By Mr. JOHNSON:

Q. I am only asking it, in connection with its effect upon your mind then, as a part of the *res gestæ*, how certain things would affect you, and in order to get at that I want to get at the state of your mind at that time. Then I may take it that your construction of

that resolution was that, although it required the approval of the the stockholders, such approval was not at all necessary in the matter?

Mr. BULLITT: I do not think that exactly describes the resolution.

Mr. JOHNSON: I will read it. Then did you understand that this resolution, "Resolved, That the board of directors be, and they are hereby, authorized to make any modifications of the existing lease with the Pullman Palace Car Company if in their judgment modifications or changes may be deemed necessary, and submit their action in that behalf to the stockholders for approval," did not require that to make their action under that resolution effectual there should be such approval?

A. That is what I understand.

By the COURT:

Q. What did you understand?

A. That there was no necessity for the approval of the stockholders.

Q. What did you understand the resolution to mean—that whatever was approved of and agreed upon as a modification of the lease should be reported to the stockholders to be approved before being carried into execution, or after it was carried into execution the approval could not affect it?

A. The latter.

By Mr. JOHNSTON:

Q. Why do you think it would be necessary to submit it for approval at all if, when it was submitted after final action had been taken, such approval would have been ineffectual?

A. This is the case: These gentlemen were put into a very difficult position. They had two alternatives. The Pennsylvania railroad contract was to terminate on the 28th of January. They
115 must either say to us, "We will agree with you to modify this lease" or else they must take the other alternative, and the lease would be canceled, as they were notified, and they would lose all revenue and have nothing left but their cars and material, which would be sold at a considerable sacrifice; in other words, their business would be all broken up. Now, those were the two alternatives.

Q. What did you understand the object was in requiring that the action of the board should be reported for approval? If it was to be effectual without their approval the question is, What was the object?

A. That is what I am trying to do. As I say, these gentlemen had to act on one of these two alternatives. They were very anxious we should make this contract with the Pennsylvania Railroad Company, regarding something of that kind better than terminating their lease or taking their property back, and they wanted to have—having determined upon the latter—I mean having determined upon the modification of the lease as one of the steps to the making of the Pennsylvania Railroad contract, in which they were inter-

ested as well as we—they wanted the approval of the stockholders, a natural thing, it seemed to me, for a board of directors to ask.

Q. You understood they wanted it afterwards, and not because their action was final?

A. Yes, sir; I did not understand——

By Mr. JOHNSON:

Q. What did you think would be the good of any disapproval if the action was final?

A. Well, I cannot tell you what might be the result of the disapproval by the stockholders except that it might ultimately lead to an election of other directors.

Q. The mischief was already done, then?

A. I say that was the position they were put in; they had these two great responsibilities.

Q. We will pass from that. Now, you were aware of the call for this meeting, and the call for this meeting was a call submitting to the stockholders for approval then and there this agreement, was it not?

A. I do not know.

Q. Then you thought that this call which followed immediately upon the execution of this instrument, familiar as you were with the terms of the resolution of the stockholders, practically was to accomplish a purpose which amounted to nothing because the final action had been conclusively taken, did you?

A. I could not say it amounted to nothing. It seemed to me if I were in such a position as those gentlemen were placed here, after I had done an action which I was to do according to my best judgment and report it to my constituents for approval, I should want to report it to them.

Q. Why call a special meeting for that purpose?

A. That I cannot tell you.

By the COURT:

Q. All directors of corporations do submit all their actions to their stockholders?

A. That I know is the custom. I have had some experience.

116 By Mr. JOHNSON:

Q. Knowing, as you did, the terms of the resolution of the stockholders, having had expressed to you at no time by any member of the board of directors an intention on their part to waive that requirement, did you ask to see a copy of the resolution of the board of directors containing their action in this matter?

A. I have no recollection of it.

Q. So that you acted in this matter and accepted this paper without having made any demand or had any inspection of the resolution in which the directors embodied their action?

A. All I know about the resolution of the board of directors was that afternoon of Friday that we were called in they had before them this agreement which Mr. Lane and I had prepared. The

board were all there, and they told us they would adopt that agreement. These were gentlemen I trusted.

By Mr. BULLITT:

Q. You spoke of the anxiety of the directors to have this contract secured with the Pennsylvania Railroad Company, as I understood you?

A. Yes, sir.

Q. From whom did you hear that—do you recollect?

A. I might say that I heard it from all of them; all of those that we met with so frequently in the months of December and January and February. They were as anxious, if not more anxious, than we were, because their very life depended on our making this contract with the Pennsylvania Railroad Company as the foundation for their rent. Failing that, they would not have any rent and would not have any contract, or would not have any income from their cars and property, and one of the things that was so largely discussed between us at those meetings was the terms with the Pennsylvania railroad. Both parties were interested—they more interested in the success of that than we, because they recognized and admitted that upon the terms we made with the Pennsylvania Railroad Company must depend the revenue, and they were going to trust in the future after that original contract expired.

Q. You have been asked by Mr. Johnson as to your opinions and reasons and the reasons actuating these people. I understood you to say that you did understand, in the first place, that that agreement was delivered absolutely and without any condition; I have understood you to say that?

A. Oh, yes.

Q. Now, what did you understand to be the reason why the directors took the responsibility of delivering that paper in that way, in view of the resolution of the stockholders?

Mr. JOHNSON: I am quite willing that anything they said may be given, but hardly the understanding of the reason.

By Mr. BULLITT:

Q. We will pass from that. You have been asked about your construction of that resolution, and I understood you to say that you did not think the stockholders had the power to limit the directors in the exercise of their power in reference to this matter?

A. I did.

117 Q. Second, I understood you to say, and correct me if I am wrong, that you did not think that the wording of the resolution had the effect even if they had the power?

A. I did.

HORACE PORTER recalled:

The WITNESS: I ask to make a correction in two points in my testimony. I find from the question that I became confused at one time between the occurrences at two different interviews, the inter-

view with the officers of the Central Transportation Company on the 28th of February, at the time the modified lease was executed, and the interview in June, in the evening, with Mr. Stevens. At the interview with Mr. Stevens in the evening, as I stated, the words "taking the chances" were used, and, as I stated, Mr. Pullman did say he would take the chances there upon the validity of the modified agreement, but I feel very certain now that that expression was not used at the previous meeting on the 28th of February. I stated that I thought it was used then. I stated rather the expression which Mr. Pullman had in his mind, and had repeated very often to different persons in pretty much the same language. I stated in my testimony, I think, that that referred to taking the chances on the validity of this agreement. What I made the mistake in was this: The expression was that he never could be induced to make a contract with the Pennsylvania Railroad Company without first having a valid contract with the Central Transportation Company.

Cross-examination by Mr. JOHNSON:

Q. Now, I understood you before that, at the meeting of 28th of February, the words "taking the chances" were used.

A. Yes, sir.

Q. That I understood you to say, but you were mistaken.

A. I was mistaken.

Q. You are now certain, are you, that at the meeting at the Continental of the 28th of February Mr. Pullman did not use the words "I will take the chance?"

A. I feel pretty certain that he did not.

Q. And you are very certain that if those words were then used they must have been used when you were doing something that prevented your hearing them?

A. I did not hear them.

Q. And you said that he then said that he would take the chances, as he said fifty or sixty times, and you are now able to distinguish the Continental interview from the other fifty or sixty occasions, and, as far as a man can be certain of anything, are certain that he did not at the Continental interview on the 28th of February say, "I will take the chances?"

A. Yes, sir.

Q. Then Mr. Pullman, on page 156 of his testimony, must be mistaken, or else you could not have heard that part of the interview in which he says, "I had taken the matter before the general
counsel, Judge Lochroy, in whom I had great confidence,
118 and he had so advised me, and I said I was willing to take
the chances on the power of the board to make the contract. That is what I said." Now, therefore, that part of the conversation must have taken place out of your presence?

A. I did not hear any reflection. I did not hear that expression.

EDWARD H. GOODMAN, having been duly sworn, was examined as follows:

By Mr. BULLITT:

Q. Where do you reside?

A. New York.

Q. How long have you been residing in New York?

A. Since last October.

Q. Prior to last October where did you reside?

A. In Philadelphia.

Q. What is your occupation, and how long have you been in that position?

A. The present position?

Q. What is your present position?

A. I am eastern general superintendent of the Pullman Palace Car Company, and have been in that position since May, 1885.

Q. What was your position prior to that?

A. I was superintendent of the Central Division of the Pullman Palace Car Company.

Q. How long have you been in the employment of the Pullman Palace Car Company?

A. Since 1870.

Q. Were you in the employment of the Central Transportation Company prior to that?

A. Yes, sir.

Q. How long?

A. A little over two years.

Q. Had you charge of the contracts which were transferred from the Central Transportation Company to the Pullman Palace Car Company?

A. I had not.

Q. Had you knowledge of them?

A. I had.

Q. How many of these contracts have lapsed?

A. I think six; and the balance of them are all merged into what is known now as the Pennsylvania system of lines.

Q. Were you present at the interviews, or any of them, which have been referred to by Mr. Pullman and General Porter and Mr. Atterbury, in reference to the negotiations between the Central Transportation Company and the Pullman Palace Car Company?

A. I was at quite a number of them.

Q. The general subject of these negotiations was what has been stated by these gentlemen?

A. Yes, sir.

Q. Were you present at the interview which took place at Mr. Mr. Lane's office on the afternoon of Friday, February 27th, 1885?

A. I was.

119 Q. Did you hear what transpired on that occasion?

A. Not all; no sir. I came in a little after Mr. Pullman and General Porter and Mr. Atterbury were there. I came in a little later. I came from the Pennsylvania office, but I would say that I was there about fifteen minutes——

Q. What did you hear while you were there?

A. I heard nothing until at the expiration, I should say, of about fifteen minutes, when the doors, their folding doors there, opened, and Mr. Lane stepped to the door and informed Mr. Pullman—we all raised up as the door was opened—informed Mr. Pullman that they had agreed to accept the proposition of this modified lease. Then they all went into what I suppose was their board-room or Mr. Lane's back office, excepting myself and I think Mr. Smith. We remained out near the window in the front office. Consequently I did not hear all the balance of the conversation.

Q. Now, we will come to the next morning. Were you present at the Continental Hotel on the morning after that when this paper was executed and delivered?

A. Yes, sir. I got to the Continental pretty early, and I met Mr. Cottringer, the secretary and treasurer, and he and I went upstairs about the same time, and, I think, walked part of the hall together; in other words, we went into the room about the same time.

Q. Please state, according to your recollection, what occurred after the parties met, who were present, and what they said and did.

A. My recollection is the same as has been testified by General Porter and Mr. Atterbury, with the exception that I thought Mr. Wright was there. I had an idea that there was another gentleman besides what they had named. Still I may be mistaken in that; but I am satisfied that those gentlemen were there.

Q. Give their names.

A. There was Mr. Cottringer, the secretary and treasurer, and Mr. Bingham and Mr. Lane and Mr. Pullman, General Porter, Mr. Atterbury, Mr. Smith, and myself.

By the COURT:

Q. Where was that and when?

A. That was the morning of the twenty-eighth of February, 1885, and I am pretty sure it was in room 20 of the Continental Hotel.

By Mr. BULLITT:

Q. Now, please state your recollection of what occurred there.

A. I haven't a great deal of recollection of what occurred, excepting the fact that—I am distinct on this point—that Mr. Lane made some remark to Mr. Atterbury. They had a paper in their hand—Mr. Atterbury or Mr. Lane, one or the other had a paper. That remark I did not hear of Mr. Lane's; and then Mr. Pullman got up, who was sitting or standing on the west side of the fire-place and directly opposite Mr. Bullitt—he got up, and the purport of it was that he could not accept that modified lease with any such provisions, and went on at quite a little length and explained that to Mr. Lane and the rest of us.

Q. Stood up or sat down?

120 A. Oh, I think he stood up; oh, yes; he got right up.

Q. What occurred after that?

A. From there I went down to the Pennsylvania——

Q. I mean was the paper executed?

A. The paper was executed; yes, sir; it was executed and handed by Mr. Bingham to Mr. Pullman, and I stayed in there I don't think over five minutes—five or ten minutes—may be ten minutes—after that was executed, and went down to the Pennsylvania office. I was there first. A short time afterwards Mr. Pullman and General Porter they followed, got in there, and, as I understood—I did not see Mr. Pullman go upstairs, but we went into Mr. Thomson's office—the vice-president—and after remaining there, I would say it was half an hour, Mr. Pullman he come down. Then the understanding was that this modified lease had been executed. There was no restriction now on the Pullman Company to execute the lease as far as the Pennsylvania—between the Pennsylvania railroad and themselves—was concerned, and as we had got all of the different articles of that lease or contract with the Pennsylvania railroad agreed or understood there was nothing left then but to get a matter of detail that was mentioned in the contract—first, the schedule of lines—not the schedule of lines—that was already provided for—but the schedule of rates, which was to be our tariff rates of that day—of that time. The next was to schedule a certain number of cars, which they detailed Mr. Pugh and myself to arrange.

Q. Mr. Pugh on the part of the Pennsylvania railroad?

A. Mr. Pugh was the general manager; and that schedule of cars required inspection and a great deal of details, which took Mr. Ely, who Mr. Pugh detailed to get this up, until after the 4th of July to get his data so that we could go ahead and submit that part of it or put that part of it to the printers for the final proof.

Q. Did you have control or the management of the sleeping-car business at that time on the Pennsylvania railroad?

A. I did, sir.

Q. What directions did you receive and upon what directions did you subsequently manage the business and settle the accounts?

A. I received directions then and there from Mr. Pullman, the president of our company, to give the necessary instructions to all interested that we would operate under this new lease of the Pennsylvania railroad commencing on the twenty-eighth day of January, 1885.

Q. The 28th of January previous to this time?

A. Yes, sir; that was previous; that was simply the next day after the termination of the old contract.

Q. Did you do it?

A. I did, sir.

Q. Have you been settling the accounts from that time to this upon that basis?

A. The accounts have been settled on that basis, as I understand it.

Cross-examination by Mr. JOHNSON:

121 Q. How did you keep the accounts with the Pennsylvania railroad between the 27th of January and the 28th of February, anterior to the 28th of February?

A. Well, that was simply held in abeyance.

Q. So that when you finally made your settlement you dated your settlement at least a month before the interview at the Continental? When you did make your settlements on that basis with the Pennsylvania railroad the settlements dated back as of a date a month prior to this?

A. Yes, sir.

Q. Your brother-in-law, Mr. Cottringer, the former treasurer——

A. Yes, sir.

Q. You were the superintendent of the Eastern Division——

A. I was superintendent of the Central Division then.

Q. And as general superintendent what had you to do with the making of this contract between the Central Transportation Company and the Pullman?

A. The original contract are you alluding to?

Q. The modified contract.

A. Virtually nothing.

Q. How did it happen that you were present at Mr. Lane's office on the 27th of February?

A. Simply because it had been my rule or custom that when there was anything affecting the interests of the Pullman Palace Car Company in my division that I at almost every interview was present with Mr. Pullman or General Porter, whether I did any good to them or not. I was always present.

Q. Had you been present at the prior interviews and negotiations?

A. I had been present at a great number of them; all that I could. There was very few that I missed.

Q. As superintendent of the Middle Division what, really, was your work—to see that the cars were in proper running order, that the proper contracts were made for transportation, and all that?

A. Yes, sir.

Q. Not the main outlines of contracts like this?

A. Well, it was in that also, for the reason that I knew in my workings with the Pennsylvania railroad that this was a very narrow question, the renewal, and that I had been using my best endeavors for nine years to bring about a renewal of that contract.

Q. How did you come to know that there was going to be a meeting at Mr. Lane's office?

A. I only knew that from the fact that Mr. Pullman or one of them told me that there was where he was to be that afternoon.

Q. Did he ask you to be present?

A. Not at all.

Q. What part did you take in that conversation except as listener?

A. None whatever.

Q. And in the meeting at the Continental the following morning what part did you take?

A. None whatever. I don't think I said a word.

122 Q. Just as at this one?

A. That is all.

Q. You heard a conversation between Mr. Lane and Mr. Pullman, I understood you to say, on the 28th, at the Continental?

A. I heard Mr. Pullman's conversation.

Q. Did you hear——

A. Mr. Lane did not address—my recollection is that Mr. Lane did not address Mr. Pullman when he first made that remark, but that was a remark made to Mr. Atterbury.

Q. By whom? By Mr. Pullman to Mr. Atterbury?

A. By Mr. Lane to Mr. Atterbury, and which remark, whatever that was——

Q. Did you hear it?

A. I did not. What called my attention particularly to it was Mr. Pullman rising and making the remark I stated.

Q. What were the words, as well as you can give us?

A. Well, it was a great deal of it—the purport of it was that——

Q. As well as you can give us the substance?

A. Well, the substance of that was that Mr. Pullman could not afford to jeopardize his company by accepting this modified lease with any restrictions.

Q. Restrictions where? Written into the body of it?

A. I don't know, sir.

Q. Did you hear a conversation which took place between Mr. Pullman and Mr. Bingham on that day?

A. Well, I am not clear of that conversation.

Q. Then, not being clear whether you heard it at all, of course you cannot give us its words or its substance?

A. No.

By Mr. BULLITT:

Q. You have been asked by Mr. Johnson why you were attending these meetings, if you were not taking an active part in the negotiations. I understood that was the question. Now let me ask, were you not the person upon whom everybody relied for information with reference to the business itself?

A. I think I was.

Q. Were you not the person upon whom both the Pullman Palace Company relied, and also the Central Transportation Company?

A. I would say yes.

Q. Were you not constantly called upon to furnish figures as to the business to both parties?

A. Yes, sir; particularly to our own company, and frequently to the Central Transportation Company?

Q. You said you were formerly in the employment of the Central Transportation Company?

A. I was.

Q. You had on various occasions at these meetings at the Continental Hotel the detailed statements of the number of cars that were being run, of the revenues from those cars, and the expenses of those cars in detail, had you not?

A. I had.

123 Q. Was not your presence at those meetings understood to be for the purpose of enabling both sides to refer to you for information?

A. Yes, sir; that is the way I understood it.

Q. And was not that the reason you were there?
A. Yes, sir.

By Mr. JOHNSON:

Q. Now, will you tell me which one of these sources of information that you possessed was open on either of the occasions of the interview at Mr. Lane's office or at the Continental Hotel? Which one of these sources of information was open? You were not asked a question about details, were you?

A. Not at either of the two meetings that have been mentioned, but a previous meeting.

Q. And there was no earthly occasion on either of those meetings to ask you a single question about details, was there?

A. No, sir; because they had already received the data from me.

Q. May I take it—I forgot that in my former cross-examination—may I take it that this agreement which was ultimately signed with the Pennsylvania railroad was not signed until after the 4th of July?

A. To the best of my knowledge, it was not.

Q. And what were those details that led to that long delay from January 26th, the date the paper is printed, to the time after the 4th of July?

A. The principal detail was the inspection of a certain number of cars as mentioned in the schedule.

Q. Didn't you know how many cars you had?

A. Most certainly; but there was a certain one hundred cars that had to be inspected, and it was a question whether the Pennsylvania railroad would accept that one hundred cars or not until after that inspection had been made by the general superintendent of motive power; and he and I agreed as to the certain one hundred cars. Now, Mr. Ely could not get through that in a month. He gave that his personal attention, and consequently it took him until after the 4th of July to make that inspection.

Q. Six months to make an inspection of one hundred cars?

A. It was not six months.

Q. How long after the 4th of July was it signed; may it have been down in August?

A. As far as that was concerned, immediately after the 4th of July, or about the 1st of July, I will say, we were through; and that was submitted then to the general manager, Mr. Pugh, and he approved it, and it was passed to Captain Green, who had charge of the final proof; and in a few days——

Q. Was that all that occurred that delayed the matter—the inspection of a hundred cars?

A. That was virtually all the cause, excepting that after that was done they might have been delayed, Mr. Roberts being away and Mr. Pullman being in Chicago.

Q. Can you really give me the date it was finally signed? Are you certain that it was finally signed before August?

A. I am not certain that it was signed before August.

124 JAMES H. SMITH, having been duly sworn, was examined as follows:

By Mr. BULLITT:

Q. Where do you reside?
A. Chicago, or Pullman, rather.
Q. Pullman, near Chicago?
A. Yes, sir.
Q. What is your occupation?
A. I am private secretary to Mr. George M. Pullman.
Q. How long have you been private secretary for Mr. Pullman?
A. For about five years.
Q. Did you come to Philadelphia with Mr. Pullman when he came for the purpose of meeting the directors and officers of the Central Transportation Company?
A. I did.
Q. In 1884?
A. In 1884; yes, sir.
Q. Prior to that time?
A. Yes, sir; in 1883.
Q. Do you remember how early in 1883?
A. I should say probably July. Certainly in the fall of 1883.
Q. How often did you come to Philadelphia with Mr. Pullman on this errand between the time you first came in 1883 down to the 28th of February, 1885?
A. I should say between thirty and forty times. Thirty I know.
Q. Were you generally present at the interviews between Mr. Pullman and the directors and officers of the Central Transportation Company?
A. Generally; yes, sir.
Q. Now, coming down to the 27th of February, the interview which has been spoken of at Mr. Lane's office, were you there?
A. I came in at the end of the interview. They had evidently broken up and they were standing, in a general conversation.
Q. Who was standing up?
A. The entire board of directors, as I took it, and Mr. Pullman, General Porter, Mr. Atterbury, and Mr. Goodman. I came in after Mr. Goodman.
Q. Did you hear anything of the conversation?
A. Nothing more than a general conversation, which I could not undertake to repeat.
Q. Now, we will come down to the next day. Were you at the Continental Hotel the next morning?
A. I was.
Q. Who was present?
A. There were Mr. Pullman, General Porter, Mr. Goodman, of the Pullman Company, yourself (Mr. Bullitt), and myself. Mr. Bingham, Mr. Cottringer, and Mr. Lane came in afterwards.
Q. I don't think you mentioned Mr. Atterbury.
A. I mentioned Mr. Atterbury, I think.

Q. What was the object of that meeting and what occurred, as you understood it?

125 A. The object, as I understood it, was to execute the modified agreement between the Pullman Palace Car Company and the Central Transportation Company.

Q. Go on and state what occurred as far as you know.

A. Of my recollection the parties of the Pullman Company were in the room. Shortly afterwards Mr. Lane, Mr. Bingham, and Mr. Cottringer came in, Mr. Cottringer bringing the seal of the company. The modified agreement was lying—the first I saw of it it was lying on the table; I don't know who brought it, but that is where I saw it; it laid there for a short time, and a general conversation occurred. It was then taken up by Mr. Lane from the table. Mr. Lane turned to Mr. Atterbury and said in substance that "this contract does not show any reference to the resolution of the stockholders." He says that "we must insert something in this that will make it contingent on the ratification of the stockholders."

Q. Mr. Lane said that?

A. Mr. Lane said that to Mr. Atterbury. Mr. Atterbury spoke up at once and very clearly, saying, "No, no; Mr. Pullman will not assent to that;" and Mr. Pullman, hearing his name, turned to Mr. Bingham, with whom he was in conversation—turned from Mr. Bingham and, I think, yourself to Mr. Lane and Mr. Atterbury, and stated that he would not under any consideration accept the modification with any question of that kind inserted. That is the recollection that I have. Then Mr. Pullman, Mr. Bingham, Mr. Lane, Mr. Atterbury, and, I think, yourself joined in a conversation which I cannot report clearly, and it was finally—finally the paper was executed, Mr. Bingham signing it. Mr. Cottringer then fixed his seal and signed it, and Mr. Bingham then passed it to Mr. Pullman, and he took it and turned it over to me.

Q. I want to read to you what Mr. Bingham said, and then I want to see what your recollection is as to it. Mr. Bingham says, "The lease was lying on the table; Mr. Lane read it. He approached Mr. Bullitt, and he said, 'I see nothing in here about the approval of the stockholders.' The COURT: Who said that? A. Mr. Lane. Mr. Lane was the attorney of the Central Transportation Company. He was president of the Pullman committee and one of the directors. He said to Mr. Bullitt, 'There is nothing in this lease about the approval of the stockholders.' The COURT: That is in the modified lease? A. Yes, sir; in what we call the modified lease. Mr. Bullitt's reply was, 'No.' Mr. Lane said, 'I will do so;' and he approached the table—a short, small table—and then Mr. Pullman said, 'No; that is not necessary to do that; don't spoil it. I will take the chances of the stockholders approving that;' and I think he added that 'if they are sensible people of course they will approve it.'" Did you hear Mr. Pullman say to Mr. Bingham, "No; that is not necessary to do that; don't spoil that. I will take the chances of the stockholders approving it," or any such words at all?

A. No, sir; there was nothing of the kind said.

Q. You heard nothing of the kind?

A. I heard nothing of the kind.

Q. Were you present at the interview at the Windsor Hotel?

A. With whom?

126 Q. When Mr. Pullman met Mr. Biddle and Mr. Bingham.

A. I saw Mr. Biddle and Mr. Bingham there with Mr. Pullman, but I was not present in the room—that is, I was in and out during the course of the conversation.

Q. You did not hear the conversation?

A. I did not hear the conversation.

Q. Were you present at the interview with Mr. Stevens, in June, which has been referred to?

A. I was in and out of the room there.

Q. So that you cannot say what was said?

A. I can't say fully what was said. I was there, and I was in and out.

Cross-examination by Mr. JOHNSON:

Q. Who told you to go to Mr. Lane's office on that day?

A. No one told me.

Q. How did you know about finding your way there? You were a Chicagoan?

A. Yes; I am a Chicagoan, but I am sorry to say that I have been in Philadelphia a good many times.

Q. Don't express sorrow for it. It ought to be the happiest moment of your life except in hot weather. How did you know how to find your way to Mr. Lane's office?

A. Well, as a matter of fact, I have been there before. I think the first time I went to Mr. Lane's office was to probably see if he was in or if he would meet the directors and Mr. Pullman at the same time. Any way, I had a message for Mr. Lane.

Q. This particular day, now. How came you to call there?

A. Because I am in the habit of being where Mr. Pullman is.

Q. A little like Mary and the little lamb?

A. Just exactly; except that Mary don't love the little lamb in this case.

Q. Were you told to meet your party around there at Mr. Lane's?

A. No, sir; I was not.

Q. And you took no part in that conversation, except that of listener?

A. I took no part whatever.

Q. And at the Continental the next morning did you hear any conversation between Mr. Bingham and Mr. Pullman?

A. I heard the conversation. I heard that there was a conversation going on, but my attention was not attracted to that conversation.

Q. So that whatever took place between Mr. Bingham and Mr. Pullman you are not prepared to testify?

A. Well, I am prepared—not fully, not wholly; but that there was a conversation. I was listening to others in the room.

Q. Then I may take it that not having heard the whole conversation you are not willing to contradict Mr. Bingham's narrative as

to what took place between him and Mr. Pullman in that conversation, may I not?

A. No, sir; you may take it that I can contradict it in so far as the signing and delivery of this paper was concerned,
127 because I know what transpired at that time, but in a general way.

Q. Did you hear what Mr. Bingham said at that time?

A. Yes, sir.

Q. And what Mr. Pullman said to Mr. Bingham?

A. I did.

Q. What did Mr. Pullman say to Mr. Bingham at the time of the actual delivery?

A. At the time the deed was handed over?

Q. Yes; from Mr. Pullman to Mr. Bingham.

A. I don't know at that moment any remark that was made.

Q. Mr. Pullman also has testified to what he said to Mr. Bingham?

A. At the moment it was handed over?

Q. About that time.

A. Oh, well, that is what I am speaking of.

Q. Are you prepared to say what it was?

A. No, I am not; because I don't know anything that was said. I know that it was handed over.

Q. But Mr. Pullman has said that something was said. Did you hear anything that was said by him?

A. Not at that moment that I speak of. At that interview?

Q. At that interview; yes. Tell us all you heard Mr. Pullman say to Mr. Bingham at that interview.

A. I heard Mr. Pullman, after this point had been raised of the insertion of something in the paper which would make it contingent on the ratification—Mr. Pullman stated emphatically to Mr. Lane, to Mr. Bingham, that under no consideration would he accept the modification with that clause in. He said that his contract with the Pennsylvania road must be dependent on a binding contract.

Q. You have not told us any other remark by Mr. Pullman to this effect: "And I said I was willing to take the chances on the power of the board to make the contract." Did you hear that?

A. No; I did not hear those words.

Q. Then may I take it that there were important parts of this conversation that you did not hear?

A. I can't hear two conversations going on at the same time. I heard the one with Mr. Lane, and then when Mr. Pullman joined in I heard that.

Q. Then you did not hear, however, that remark of Mr. Pullman?

A. No.

Q. The difference between them is just what Mr. Bullitt has read to you. He has read what Mr. Bingham says, that he would take the chances of getting the approval, and Mr. Pullman says, "I said I will take the chances on the power of the board to make the contract." Now, you did not hear either of those remarks, did you?

A. Not at that meeting.

Q. Therefore you are not prepared to say whether Mr. Pullman's version or Mr. Bingham's version is correct from anything you heard?

A. Not from anything I heard at that meeting.

Q. That is all I am asking you about. What Mr. Lane said
128 was that the contract does not show any reference to the stockholders, was it, or in substance that the contract did not show it?

A. No; he did not state it. What he stated was that he thought that that ought to be inserted in the contract.

Q. No, but you certainly used the words—I may get some of them wrong, but you certainly used substantially these words—that Mr. Lane said the paper—the contract—does not show any reference to the stockholders.

A. It may be that he did say——

Q. I am quoting you.

A. Or he says further, if he said that, that it was his intention—the exact words I can't remember—it was his desire that this should be inserted in the contract before it was signed.

Q. Then the substance of what Mr. Lane said was: "The contract does not show any reference to the stockholders, and I want that reference inserted in it." Now, that was substantially what Mr. Lane said, was it?

A. That was what he said, as far as I can remember the words.

Q. And Mr. Pullman was unwilling that there should be inserted in that contract such a reference?

A. Most emphatically.

EDWARD H. GOODMAN recalled.

By Mr. BULLITT:

Q. You have heard me read this testimony of Mr. Bingham, did you not?

A. Yes, sir.

Q. Did you at that interview at the Continental Hotel, on the morning of the 28th, hear anything of this kind: Mr. Bingham says, "Yes, in what we call the modified lease. Mr. Bullitt's reply was, No"—that is, referring to the fact that that language was not there. "Mr. Lane said, 'I will introduce it,' and he approached the table—a short, small table. Then Mr. Pullman said, 'No; that is not necessary, to do that; don't spoil it; I will take the chances of the stockholders' approval of that,' and I think he added that 'if they are sensible people of course they will approve it.'" Did you hear any such remark by Mr. Pullman?

A. I did not, and I do not think he said it.

(Objected to.)

Q. Did you hear the conversation between Mr. Pullman and Mr. Bingham—that is, the principal part of the conversation—or not?

A. I did, and I paid very particular attention to what Mr. Pullman was talking about, and I can give more information on what

Mr. Pullman said than any other gentleman in the room—that is, than what any other gentleman said in that room.

Q. You say you did not hear anything of the kind?

A. I did not, sir.

By the COURT:

Q. And you were there throughout the whole conversation, were you?

A. I was.

By Mr. BULLITT:

Q. Did you hear all that Mr. Pullman said?

A. I think I heard every word that was said, excepting, it might be, in his conversation when he was sitting down aside of the fireplace, either alongside of you or alongside of him.

129 By Mr. JOHNSON:

Q. Did you hear Mr. Pullman say anything about taking the chances?

A. I did not.

Mr. BULLITT: I desire to read the letter produced by Mr. Atterbury and referred to from Captain Green.

(Objected to.)

(Following is the letter to which Mr. Bullitt refers:)

"PENNSYLVANIA RAILROAD COMPANY,
"OFFICE OF THE FOURTH VICE-PRESIDENT,
"PHILADELPHIA, *March* 2*d*, 1885.

"C. L. Atterbury, Esq., 58 William street, New York.

"MY DEAR SIR: I send you herewith the last revises of the Pullman contracts, main and supplementary, which I understand now to be in final shape, except that the number of cars to be embraced in Schedule 'B' is to be inserted in the main contract, and that schedule is to be agreed upon between Mr. Pugh and your people. Please note the language that I have used at the foot of Schedule 'A' in accordance with the suggestion that I made to — on Saturday. You know we already control the Alleghany Valley, Vandalia, and Grand Rapids and Indiana roads through their stock, and therefore I changed the language of the memorandum so as to read that those lines would not be covered by the contract until we assumed direct control of the same and after the termination of any existing contracts. I think this makes our meaning clearer and trust you will approve of the change.

"Very truly yours, JNO. P. GREEN."

Mr. BULLITT: The ground upon which we offer it is this: We think that in this case the fact that the whole of this negotiation was predicated upon the falling in or lapsing of the lease with the Pennsylvania railroad; that at the time of the execution and delivery of

this paper it was stated by Mr. Pullman distinctly that he would not enter into the lease with the Pennsylvania Railroad Company until that paper was executed; the fact which we have proven, that immediately upon the execution and delivery of that paper he went to the Pennsylvania railroad office and did state to Mr. Roberts that he would close the contract; the fact which we have proven by Mr. Goodman and by Mr. Pullman, that from that time on the business has been operated under that contract, and all the accounts have been so settled; and then we supplement those facts by proving that the vice-president of the Pennsylvania railroad and Mr. Atterbury, who was then acting as the counsel of the Pullman Palace Car Company in arranging this matter, Mr. Green wrote to Mr. Atterbury this letter, in which he states that at that time the matter was substantially closed between the Pennsylvania railroad and the Pullman Palace Car Company, for the purpose of sustaining that part of the case which we have presented, we think this letter of material evidence.

(Objection sustained. Exception by defendant.)

Mr. DICKSON: Then we offer the annual reports of the
130 board of directors of the Pennsylvania Railroad Company to the stockholders at the annual meeting of March 10th, 1885, particularly the paragraph relating to the contract with the Pullman Palace Car Company.

(Objected to. Objection sustained. Exception by defendant.)

GEORGE M. PULLMAN recalled.

By Mr. DICKSON:

Q. You have spoken of the conversation you have had with Mr. Roberts in reference to his annual report.

A. Yes, sir.

Q. And that he had told you he wanted to mention in the annual report the making of this contract with the Pullman Palace Car Company.

A. Mr. Roberts stated to me that if the contract was completed—was accepted by the Pullman Company—it would go into the report that was then ready for the directors, to be handed into the annual meeting of the stockholders, and the matter would be closed and concluded; and it was for that purpose I was desirous of notifying him of my acceptance of the contract.

Q. Did you see this annual report at or about the time it was made?

(Objected to. Objection sustained.)

Defendant closes.

Mr. JOHNSON: I offer in evidence the communication to Mr. Pullman of the resolution, which he identified, of the board of directors of the Central Transportation Company of the 21st of March, 1885; also his two letters of the 10th of March, 1885, and the 30th of

March, 1885, and a third letter by Mr. Weinshimer, the secretary, of the 26th of March, 1885.

Mr. DICKSON: Objected to on the ground that the plaintiff cannot by recitals——

The COURT: I will not take up the time to hear.

(After the court had heard the objections and the argument of counsel in support and had disposed of the question and admitted the evidence, counsel desired to state the reasons for objecting, which the court would not take the time to hear.)

(Counsel desires permission to state upon the record that he does not wish to put upon the minutes the reasons in the nature of an argument, but to comply with what he understands to be the rule of giving the grounds of the objection, and now asks an exception for not being permitted to do so.)

The COURT: If you desire to put in writing your statement of the reason it shall be attached to the record.

(Objected to. Objection overruled. Exception for defendant.)

Mr. JOHNSON: I now offer in evidence the minutes of the meeting, which has been referred to, of the board of directors,
131 at Mr. Lane's office, on the 27th of February, 1885, and of the 26th of February, 1885, which were incorporated therein by reference for the purpose of showing what the resolution was.

Mr. DICKSON: We object to that on the ground that they were not communicated to Mr. Pullman, the defendant. There is nothing to show that they were ever communicated to Mr. Pullman or any representative of the Pullman Company.

Mr. JOHNSON: My object is simply to prove the minute of the actual action of the board of directors on this modified agreement, what authority was actually given by the directors, and I only offer the minutes as to that.

Mr. BULLITT: We would like to have the minutes first offered separately, because we may have a different objection to one from that which may apply to the other.

Mr. JOHNSON: I offer then, in the first place, the first minute in order of time, the 26th of February.

Mr. BULLITT: We object to that because that resolution was never communicated to the defendant, and there is no evidence that in any conversation which occurred it was ever referred to.

(The offer of both minutes is objected to, the objection is overruled, and an objection taken by defendant to the admission of each.)

(Mr. Johnson reads minutes of February 26th and 27th, 1885, referred to, which were in words and figures following):

On motion of Mr. Wright, seconded by Mr. Howard, the following was offered:

Whereas the contract between the Pullman's Palace Car Co. and the Pennsylvania Railroad Co. expired January 27th, 1885; and

Whereas by the provisions of the lease between the Pullman's

Palace Car Co. and the Central Transportation Co. it now becomes necessary to modify the rental to be paid thereunder; and

Whereas long and repeated interviews have been had between the representatives of the Central Co. and the Pullman's Car Co. in reference to the amount of such rental, based on the contract that the latter company could make with the Pennsylvania Railroad Co.; and

Whereas from an examination of the provisions of such proposed contract with the Pennsylvania Railroad Co. it appears that the share of the profits which this company will be entitled to receive therefrom fall much below that received by it under the preceding contract, which has expired, and by reason of the right of termination at short periods reserved to the Pennsylvania Railroad Co. in such proposed contract, and profits or rental to this company will be subject to the contingencies thereof, and it further appears that upon such determination this company will be left with its cars and equipment unemployed without lines of railroad upon which it can operate the same, whereby such property will be largely depreciated in value, resulting in permanent loss to this company; and

131*a* Whereas, in view of the premises, it appears to the board to be for the best interest of the stockholders of this company that the offer of the Pullman's Company to pay an annual rental of $66,000 (or three per cent)., with the privilege to each stockholder to exchange his or her stock for the stock of the Pullman's Palace Company, upon the basis of four shares of Transportation stock for one share of Pullman's Company stock, be accepted; and

Whereas at the annual meeting of the stockholders of this company held April 21, 1884, it was "Resolved, That the board of directors be, and they are hereby, authorized to make a modification of the existing lease with the Pullman's Palace Car Company if, in their judgment, modifications or changes may be deemed necessary, and to submit their action in that behalf to the stockholders for their approval:" Therefore,

Resolved, That in the judgment of this board it has become necessary to modify the existing lease with the Pullman's Palace Company, and this board does hereby agree to a modification of the same by a reduction of the rental to be paid by the Pullman's Palace Car Company to an annual rental of three per cent. upon the capital stock of this company, or $66,000 per annum, payable quarterly, with the privilege to each stockholder to exchange his or her stock for the stock of the Pullman's Palace Car Company, at the rate of four shares of Transportation stock for one share of Pullman's Palace Car Company stock, the exchange to be made on or before the 17th day of April, 1885; also

Resolved, That the president and secretary be, and they are hereby, authorized to execute on behalf of this company the agreement of modification in accordance with the foregoing resolution in the form prepared by counsel and now submitted to this board; also

Resolved, That a meeting of the stockholders be called to be held

on the 18th of March, 1885, at 11 o'clock a. m., to whom shall be submitted the action of this board for their approval; and

Resolved, That the president and secretary are hereby instructed to advertise the call for said meeting according to law.

The question upon above preambles and resolutions was put,
131*b* and they so ordered, but *as* the form of agreement not being quite perfected, the board adjourned, to meet at same place on Friday, 27th inst., at 3 o'clock p. m.

J. F. COTTRINGER, *Secretary.*

On Friday, the 17th of February, 1885, an adjourned meeting of the board of directors was held at 719 Walnut street.

Present: John C. Bingham, W. F. Lockard, Josiah Kisterbock, W. J. Howard, W. S. Lane, Samuel McClary, Jr., John A. Wright.

The agreement between the Pullman's Palace Car Company and the Central Transportation Company for a modification of the rental, as drawn up by counsel and ordered by the board of directors at meeting of 26th, was read as follows:

Here follows agreement.

* * * * * * *

A vote was then taken on approval or disapproval of foregoing agreement. The result was—

Yeas: Howard, Wright, Lane, Kisterbock, Bingham.

Nays: McClary, Jr., Lockard.

After which Mr. Lockard asked Mr. McClary to make the vote unanimous, which was done, and the agreement was unanimously approved of.

On motion, the board adjourned.

PHILADELPHIA, FRIDAY, *June 18th*, 1886.

It is agreed that the charter of the Central Transportation Company is in evidence.

And thereupon counsel for plaintiff and defendant respectively submit certain points in the following words:

Plaintiff's Points.

1. If the jury find that at the annual stockholders' meeting held on the 21st of April, 1884, at which meeting the board of directors who acted in the matter of the negotiations for a modification were elected, a resolution was passed to this effect: "Resolved, That the board of directors be, and they are hereby, authorized to make any modifications of the existing lease with the Pullman's Palace Car Company if, in their judgment, modifications or changes may be deemed necessary, and submit their action in that behalf to the stockholders for approval;" and if the jury find that before the execution of the so-called modification of the lease the defendant corporation was acquainted by the plaintiff's directors with this resolution, it accepted the contract which was executed on the twenty-seventh day of February, 1885, subject to the necessity of securing an approval of the same by the stockholders of the plain-

tiff corporation—if said stockholders met and refused to approve the so-called modification, it is not binding on their corporation.

132 2. If the jury find the above facts, and further find that before the delivery of the so-called modification the officers who delivered it requested an insertion of a proviso requiring the approval of the stockholders, and that Mr. Pullman, the president of the corporation defendant, said he would take the chances of the right of the stockholders to contest the matter, then the so-called modification does not bind the corporation.

3. If the resolution of the board of directors of the corporation plaintiff, under which the so-called modification was prepared, required the approval of the stockholders of the modified lease, it was not competent for the officers who delivered it to waive such requirement.

Defendant's Points.

I. That the board of directors of the Central Transportation Company had full power and authority in their discretion to make, execute, and deliver the agreement of February 27th, 1885, modifying the terms of the lease of February 17th, 1870.

II. That the stockholders of the Central Transportation Company had no power to limit or restrict the power and authority of the board of directors of the Central Transportation Company to deal with the question of the reduction of the rental under the original lease in the event provided for in the eighth article.

III. That the resolution of April 21st, 1884, did not qualify, restrict, or control the discretion of the board of directors in agreeing to a modification of the terms of the original lease. On the contrary, it expressly authorizes them to make such an agreement as that of February 27, 1885, and merely directed them after the agreement was made to report their action to the stockholders.

IV. That if the president of the defendant corporation was informed by the directors of the Central Transportation Company, at the adjournment of the meeting of the board on February 27th, 1885, that the agreement had been unanimously approved at the meeting of the board, and that they would then and there deliver the agreement, but the seal was not there and that they would execute and deliver it the next day, he was authorized to assume that the executive officers of the company had full power and authority to execute and deliver the agreement of February 27th, 1885, as the act and deed of the company; and if the minutes of February 26th, 1885, were not communicated to him or other representatives of the defendant, the defendant would not be affected with notice of the terms of that minute.

V. That under the minutes of the board of directors the president and secretary were authorized and empowered to execute and

133 deliver the agreement of February 27th, 1885, as the act and deed of the Central Transportation Company.

VI. That if the jury find that the agreement of February 27th, 1885, was delivered to the president of the corporation without con-

dition, and was accepted by him as a binding and final contract, on the faith of which the defendant entered into the new agreement with the Pennsylvania Railroad Company, such agreement would work the reduction of the rental to the rate of $16,500 a quarter, as therein specified, and their verdict should be for the plaintiff at that rate, with interest from the dates of maturity.

VII. That the jury should disregard the testimony of Mr. Bingham and other witnesses called by the plaintiff tending to show conditional delivery of the agreement of February 27th, 1885.

Mr. DICKSON: Of course, I have no right to ask the court to charge on them, but as a part of the argument I will submit these points:

VIII. If the jury find that it was the understanding and intention of the board of directors in adopting the minute of February 26th and February 27th, 1885, to authorize and direct the executive officers to execute and deliver the agreement of February 27th, 1885, then the executive officers were acting in the line of their duty in making such delivery, and in determining this question the jury must take into consideration the testimony of the witnesses of the defendant tending to prove that it was considered essential to the interests of the Central Transportation Company that the new agreement should be made by the Pullman Company with the Pennsylvania Company, and it was known to them all that a final answer had to be given to Mr. Roberts on the morning of the 28th, and that therefore it could not have been intended that the delivery should be postponed until after the meeting of the stockholders, which was not called until the 18th of the following month.

IX. That if the directors authorized the executive officers to deliver the agreement of February 27th, 1885, upon condition that it was to become invalid upon the disapproval of the stockholders, the delivery would be good and the condition void.

And thereupon the learned judge did answer the points as follows:

"As I have already indicated to counsel, the first and second points of plaintiff are disaffirmed. The third point is affirmed and will be noticed at large in the general charge.

"The first point of the defendant is affirmed. It reads as follows:

'That the board of directors of the Central Transportation
134 Company had full power and authority in their discretion to make, execute, and deliver the agreement of February 27th, 1885, modifying the terms of the lease of February 17th, 1870.' I charge the jury, as stated in the point just read, and I do so for the purposes of this case, as stated at an earlier point in the case. I have adopted this view for the purpose of enabling the parties to reach the jury with the questions of facts which are about to be submitted.

"Second. We are asked to say 'that the stockholders of the Central Transportation Company have no power to limit or restrict the power and authority of the board of directors of the corporation of the Central Company to deal with the question of the reduction of

the rental under the original lease in the event provided for in the eighteenth article.'

"We affirm that point also for the reasons stated.

"The third point is disaffirmed, and there will be no advantage in repeating it.

"The fourth point is affirmed and fully noticed in the general charge.

"The fifth point is disaffirmed.

"The sixth point cannot be affirmed in the terms in which it is drawn, and I need say nothing further about it here, except that it is noticed in the general charge.

"'If the jury find that the agreement of February 27th, 1885, was delivered to the president of the corporation defendant without condition and was accepted by him as a binding and final contract,' &c.

"I have already said I cannot affirm it in the terms here stated, because it does not go far enough. If the officer who did this had authority to do it, then the point is true; otherwise it is not. It is disaffirmed."

And thereupon the learned judge did charge as follows:

As you were informed at the outset, this suit is brought to recover $66,000, being one quarter's rent due under the terms of the lease entered into by the parties on the seventeenth day of February, 1870.

The defendant does not deny all liability, but alleges that the terms of the lease have been modified so as to reduce the annual rent from $264,000 to $66,000, making the quarterly payment one-fourth of this sum, $16,500. The defense, therefore, is that the lease was modified, as alleged. Was it so changed? As evidence that it was the defendant produces the paper dated February 27th, 1885, signed by the president and secretary of the plaintiff, called here the modified lease. If this paper was delivered to the defendant with the understanding that it was a completed contract to go into effect immediately, without submission to stockholders for approval, and if, also, the officers so delivering it had authority to do this (that is, to deliver it free from condition), the defense is fully sustained.

Thus you observe the case presents two important questions of fact for your consideration:

First. Was the paper delivered with the understanding that it was to take effect immediately, free from the contingency stated—of approval by stockholders? If it was, then—

Second. Had the officers who so delivered it authority to
135 do this?

To sustain the defense, therefore, you will observe and bear in mind that both these questions must be found in favor of the defendant. If the paper was not delivered with the understanding that it should go into effect immediately, without submission to the stockholders, then you need go no further, for in such case the second question—respecting the authority—will not arise.

As you must see, each one of these questions is of vital importance. In considering them the order in which they have been presented

may be reversed. It seems most convenient and orderly to inquire first into the authority respecting the delivery. The officers who executed the paper had no authority in the premises except such as the board of directors conferred. The minutes of the board, if correctly kept (and their correctness has not been questioned), show that on the twenty-sixth day of February the board approved of the proposed modification of the lease and authorized the president and secretary to execute the necessary paper, without saying anything about delivering it, directing at the same time that a meeting of stockholders be held on the 18th of March following, to which the action of the board in this respect should be submitted for approval. The construction of this written evidence is for the court, and we charge you that the authority thus conferred upon the officers did not authorize a delivery of the paper except upon the condition that it be submitted to stockholders for approval. There is no other minute enlarging this authority. If there was no other evidence bearing upon this question we would have to charge you that the officers who delivered the paper had no authority to deliver it as a completed contract, free from the contingency referred to, and that the defense, therefore, cannot be sustained. The defendant, however, alleges that notwithstanding the terms of the minute the board of directors informed Mr. Pullman (the defendant's president) directly after the meeting of the 27th that the board had authorized the execution and delivery of the paper as a completed contract, to take effect without submission to stockholders, and that it was delivered and accepted by him acccordingly. The defendant asks us to charge you in this respect as follows:

"That if the president of the corporation defendant was informed by the directors of the plaintiff company at the adjournment of the meeting of the board on February 27th that the agreement had been unanimously approved at the meeting of the board and that they would then deliver the agreement, but the seal was not there, and they would execute and deliver it next day, the president of the corporation defendant was authorized to assume that the officers of the company had full power and authority to execute and deliver the paper in question as the act and deed of the company; and if the minutes of February 26th were not communicated to him or other representative of the defendant, the defendant would not be affected with notice of that minute."

Understanding the point to mean that if the board of directors there assembled so informed Mr. Pullman, and he understood from
136 this language that the delivery was to be free from the contingency of approval by stockholders (and was justified by the language used in so understanding), we affirm the point. If, however, the point is intended to assert that if Mr. Pullman was so informed by individual members of the board or by any one else present representing the plaintiff the effect of such information would be to nullify (virtually) the provisions of the minute requiring submission to stockholders. If such is the meaning of the point it cannot be affirmed. In other words, if the point is intended to assert that if any person or persons other than the board of directors

so informed Mr. Pullman it justified him in assuming that the meeting of the board had authorized its officers to deliver the paper as a completed contract, to take effect without submission to stockholders, and (consequently) that the plaintiff is thereby estopped, setting up the action of the meeting, as shown by its minutes. If, I repeat, such is the intended meaning of the point it is not a correct statement of the law and is not affirmed.

Boards of directors of incorporated companies, in discharging the duties imposed upon them, act in meetings convened for the purpose, and their acts ordinarily are witnessed and proved by their records. One who relies for title or other right on the action of such boards must, under ordinary circumstances, look to the record. He cannot safely rely upon what is said by an officer of the company, even though he be a member of the board itself. Such officer has no authority thus to represent and bind the corporation. If, therefore, Mr. Pullman was informed by anybody other than the board of directors itself that the executive officers of the plaintiff had been authorized by the board to execute and deliver the paper upon different terms from those stated in the minute it was wholly unimportant. Mr. Pullman should not have relied upon it. He was bound to know that this was not a proper source of information concerning the fact. If, however, when the doors of the board were thrown open on the 27th of February Mr. Pullman was informed by the board itself or in its presence and hearing, with its assent (which would be the same thing), that its executive officers were authorized by it to execute and deliver the paper, to take effect without submission to stockholders, this may be regarded as an authorization of such execution and delivery of the paper and sufficient, consequently, to estop the company setting up the terms of the minute previously made and adopted. To produce this effect, however—that is, to estop the company setting up the minute as the only evidence of the authority conferred—the evidence that Mr. Pullman was so informed by the board or in its presence, with its assent, must be entirely clear. The facts on which an estoppel is grounded (either in equity or law) must not be left in doubt. As is said by a distinguished author, "The doctrine of estoppel has been guarded with great strictness, not because the party enforcing it necessarily wishes to exclude the truth (for it is rather to be supposed that that is true which the opposite party has solemnly recited or asserted), but because the estoppel may exclude the truth. Hence estoppels must be certain to every intent, for no one should be denied setting up the truth unless it is in plain and clear contradiction of his assertions and acts." 1 Green. Ev., section 22.

137 Now, passing to the facts of the case, did the board so inform Mr. Pullman (as the defendant alleges) respecting its action about this paper, thus misleading and inducing him to believe that it had authorized the delivery as a binding contract, free from the contingency of stockholders' approval? If you are not fully satisfied the board did so inform and mislead him the written minute (the usual and proper record of the board's action) is to be taken as the only evidence of authority to execute and de-

liver the paper. This, as I have before said, did not authorize a delivery except on the condition of approval by stockholders. If you are fully satisfied that the board so informed and misled Mr. Pullman respecting its action, then you will further inquire and determine whether the officers delivered the paper accordingly—that is, delivered it with the understanding that its binding effect was not to await the approval of stockholders. What occurred on the two occasions—the one at Mr. Lane's office and the other at the Continental Hotel—when Mr. Pullman and others, on behalf of the defendant, met the president and other officers of the plaintiff (and what occurred subsequently when Mr. Pullman is alleged to have admitted that the paper was delivered subject to approval by stockholders), you have heard from the several individuals present. Their testimony is contradictory respecting the substance and effect of what occurred and apparently irreconcilable. Those called by the plaintiff testify one way, and those called by the defendant another. These witnesses are men of great intelligence and great respectability. It cannot be supposed that any of them would willingly falsify. The marked (and irreconcilable) contradiction in their statements is but another instance of the uncertainty of human testimony. Men see and hear, understand and remember, so differently, in consequence of difference of mental constitution, of interest, of prejudice, or passion, that such disagreement in the testimony of witnesses (where it would seem that none should exist) is not uncommon.

If there was nothing more than the testimony of these witnesses to shed light on the occurrences of the several occasions alluded to the ascertainment of the truth would seem impossible. There is more, however. The object which the parties, respectively, had in view, their motives, the circumstances under which they acted, their duties and obligations as respects others, and their conduct before and after the transaction are before you and may afford essential aid in reaching a just conclusion. Counsel have called your attention to these matters, as well as to the testimony of the witnesses, and have commented upon them. I should but consume time unprofitably by a minute reference to the testimony here. There are, however, a few important undisputed facts, very significant in their bearing, to which I esteem it proper to invite your attention.

The original lease contemplated a contingency upon the occurrence of which its surrender or a change in its terms might become necessary. Its eighth clause reads as follows:

"Eighth. In the event that any of the railroad companies mentioned in the assigned contract shall at any time during this agreement refuse to permit the cars of the second party to be run
138 on and over their respective lines of roads, so that by reason of such prevention or refusal the profits, income, revenue derived from and under any other and remaining contracts with other and remaining railroad companies mentioned in the assigned contracts shall fall below the sum of two hundred and sixty-four thousand dollars ($264,000), then and in that event said second party shall have the right either to declare this contract null and

void and surrender to said first party the said hereinbefore-demised property or shall and will pay in like manner, in lieu of the said sum of two hundred and sixty-four thousand dollars ($264,000), such sum or share of the net revenues from the remaining lines of roads as the parties hereto may at the time agree upon."

This contingency arose long before the meetings in February, 1885. Neither party desired a surrender of the lease. That a change in the amount of rent must be agreed upon or the lease be surrendered was mutually understood. Negotiations were commenced, but no satisfactory result was reached before the annual meeting of stockholders (of the plaintiff company) in April, 1884. At that meeting new directors were elected, who were instructed to agree to a modification of the lease, subject, however, to approval by the stockholders. This is the substance and effect of the stockholders' resolution. After many conferences between the representatives of the two companies a modification of the lease was agreed upon (by these representatives) in the terms set out in the paper before us. It had not yet, however, had the sanction of the plaintiff's board of directors. A meeting of this board was called for and held on the 26th of February to consider it. At this time a contract of very great importance between the plaintiff and the Pennsylvania Railroad Company (which had been transferred to the defendant under the lease) was about expiring. The renewal of this contract was a subject of solicitude to both parties. The defendant was urging the completion of the business respecting the modification of its lease, as preliminary to its acceptance of the terms proposed and insisted upon by the railroad company for renewal of the contract with it. Under these circumstances the representatives of the parties met here in February, 1885. The proposed modification was then submitted to the plaintiff's board for acceptance. In view of the circumstances under which this board was elected (the resolution of instruction passed at the time) is it probable or not that the board would authorize the execution and delivery of the modified lease to go into effect without the stockholders' approval? The minutes of its meeting show that it was not then unmindful of the instructions of stockholders and was not then willing to authorize such an unconditional delivery of the paper. Its business was not entirely completed on that day, and it met again the next morning. The provision of its minutes, requiring a submission to stockholders, remained without change; so that when it finally adjourned on that day it had not authorized a delivery of the paper except upon the terms demanded of it by the stockholders' resolution, and specified in its own minute. Now, did the board on the same morning—after its adjournment—agree to an unconditional delivery, to take effect without submission to stockholders? The paper was delivered. Is it probable or not that it would have been delivered at all if not intended to take immediate un-
139 conditional effect? What was the object of the delivery? May there or not have been some reason for the delivery, though the contract was not to take effect until approved by stockholders? In considering this it is important to remember that Mr.

Lane and others, representing the plaintiff, desired to deliver it with a written provision on its face saying that it shall not go into effect until so approved, thus showing or indicating that there was a purpose on the plaintiff's part to deliver the paper, although it was (as then asserted) to await such approval. At this time the renewal of the contract with the Pennsylvania Railroad Company was pending, and Mr. Pullman was urging the completion of the business respecting the lease with a view to determining his action respecting the contract with the railroad company. Is it probable or not, therefore, that Mr. Pullman would accept the proposed modified lease subject to approval by stockholders? You must judge in the light of all the evidence bearing on the question. Did he enter into a binding contract with the railroad company; and, if so, how did it affect him? You have heard the comments of counsel on this subject and can judge. What was the subsequent conduct of the parties? As we have seen, a meeting of stockholders was called by the board, when it approved the proposed modification of lease, to be held on the 18th of March (a little over twenty days off), to which the proposed modification was to be submitted. The board's approval and its call of the stockholders' meeting was one act. The meeting was advertised directly after, and was held at the time named. The business was laid before it and discussed; Mr. Pullman's counsel and other representatives of the defendant were present. The proposed modification was not approved. Is it probable or not that this would have occurred if the paper containing the modification had been delivered without condition and was then a binding contract, irrespective of the approval of stockholders? What further occurred you will remember and consider.

In conclusion, I repeat the two questions before stated:

First. Had the officers who delivered the paper authority to deliver it, except on condition that it should be submitted to stockholders for approval? If they had such authority, then—

Second. Did they deliver it without such condition—that is, unconditionally—to take immediate effect without such submission?

And thereupon the defendant did except to the action of the learned judge in affirming the plaintiff's third point and in refusing to charge as requested in defendant's third, fifth, and sixth points, and did also except to the following passages in the charge of the learned judge:

(1.) [First. Was the paper delivered with the understanding that it was to take effect immediately, free from the contingency stated, of approval by stockholders?]

(2.) [To sustain the defense, therefore, you will observe and bear in mind that both these questions must be found in favor of the defendant. If the paper was not delivered with the understanding that it should go into effect immediately, without submission to the stockholders, then you need go no further.]

140 (3.) [The minutes of the board, if correctly kept (and their correctness has not been questioned), show that on the twenty-sixth day of February the board approved of the proposed modification of the lease and authorized the president and secretary to ex-

ecute the necessary paper, without saying anything about delivering it—directing at the same time that a meeting of stockholders be held on the 18th of March following, to which the action of the board in this respect should be submitted for approval. The construction of this written evidence is for the court, and we charge you that the authority thus conferred upon the officers did not authorize a delivery of the paper except upon the condition that it be submitted to the stockholders for approval.]

(4.) [Understanding the point to mean that if the board of directors there assembled so informed Mr. Pullman, and he understood from this language that the delivery was to be free from the contingency of approval by stockholders (and was justified by the language used in so understanding), we affirm the point. If, however, the point is intended to assert that if Mr. Pullman was so informed by individual members of the board or by any one else present, representing the plaintiff, the effect of such information would be to nullify (virtually) the provisions of the minute requiring submission to stockholders; if such is the meaning of the point it cannot be affirmed. In other words, if the point is intended to assert that if any person or persons other than the board of directors so informed Mr. Pullman, it justified him in assuming that the meeting of the board had authorized its officers to deliver the paper as a completed contract, to take effect without submission to stockholders, and (consequently) that the plaintiff is thereby estopped setting up the action of the meeting, as shown by its minutes—if, I repeat, such is the intended meaning of the point, it is not a correct statement of the law and is not affirmed.]

(5.) [To produce this effect, however—that is, to estop the company setting up the minute as the only evidence of the authority conferred, the evidence that Mr. Pullman was so informed by the board or in its presence with its assent must be entirely clear. The facts on which an estoppel is grounded (either in equity or law) must not be left in doubt. As is said by a distinguished author, "The doctrine of estoppel has been guarded with great strictness, not because the party enforcing it necessarily wishes to exclude the truth (for it is rather to be supposed that that is true which the opposite party has solemnly recited or asserted), but because the estoppel may exclude the truth. Hence estoppels must be certain to every intent; for no one should be denied setting up the truth unless it is in plain and clear contradiction of his assertions and acts." 1 Green. Ev., section 22.]

141 (6.) [Now, passing to the facts of the case. Did the board so inform Mr. Pullman (as the defendant alleges) respecting its action about his paper, thus misleading and inducing him to believe that it had authorized the delivery as a binding contract, free from the contingency of stockholders' approval? If you are not fully satisfied the board did so inform and mislead him the written minute (the usual and proper record of the board's action) is to be taken as the only evidence of authority to execute and deliver the paper. This, as I have before said, did not authorize a delivery except on the condition of approval by stockholders.] [If you are

fully satisfied that the board so informed and misled Mr. Pullman respecting its action, then you will further inquire and determine whether the officers delivered the paper accordingly—that is, delivered it with the understanding that its binding effect was not to await the approval of stockholders.] [What occurred on the two occasions—the one at Mr. Lane's office and the other at the Continental Hotel—when Mr. Pullman and others, on behalf of the defendant, met the president and other officers of the plaintiff, and what occurred subsequently, when Mr. Pullman is alleged to have admitted that the paper was delivered subject to approval by stockholders, you have heard, from the several individuals present. Their testimony is contradictory respecting the substance and effect of what occurred and apparently irreconcilable. Those called by the plaintiff testify one way and those called by the defendant another. These witnesses are men of great intelligence and great respectability. It cannot be supposed that any of them would willingly falsify. The marked and irreconcilable contradiction in their statements is but another instance of the uncertainty of human testimony.]

(7.) [If there was nothing more than the testimony of these witnesses to shed light on the occurrences of the several occasions alluded to the ascertainment of the truth would seem impossible.] [There is more, however. The object which the parties respectively had in view, their motives, the circumstances under which they acted, their duties and obligations as respects others, and their conduct before and after the transaction are before you, and may afford essential aid in reaching a just conclusion.] [There are, however, a few important, undisputed facts very significant in their bearing to which I esteem it proper to invite your attention.]

(8.) [At that meeting new directors were elected who were instructed to agree to a modification of the lease, subject, however, to approval by the stockholders. This is the substance and effect of the stockholders' resolution.]

(9.) [In view of the circumstances under which this board was elected—the resolution of instruction passed at the time—is
142 it probable or not that the board would authorize the execution and delivery of the modified lease to go into effect without the stockholders' approval? The minutes of its meeting show that it was not then unmindful of the instructions of stockholders, and was not willing to authorize such an unconditional delivery of the paper.]

(10.) [The provision of its minutes requiring a submission to stockholders remained without change, so that when it finally adjourned on that day it had not authorized a delivery of the paper except upon the terms demanded of it by the stockholders' resolution and specified in its own minute.]

(11.) [The paper was delivered. Is it probable or not that it would have been delivered at all if not intended to take immediate, unconditional effect? What was the object of the delivery? May there or not have been some reason for the delivery, though the contract was not to take effect until approved by stockholders?] [In

considering this it is important to remember that Mr. Lane and others, representing the plaintiff, desired to deliver it with a written provision on its face saying that it shall not go into effect until so approved, thus showing or indicating that there was a purpose on the plaintiff's part to deliver the paper, although it was (as then asserted) to await such approval.]

(12.) [What was the subsequent conduct of the parties? As we have seen, a meeting of stockholders was called by the board, when it approved the proposed modification of lease, to be held on the 18th of March (a little over twenty days off), to which the proposed modification was to be submitted. The board's approval and its call of the stockholders' meeting was one act. The meeting was advertised directly after, and was held at the time named. The business was laid before it and discussed. Mr. Pullman's counsel and other representatives of the defendant were present. The proposed modification was not approved. Is it probable or not that this would have occurred if the paper containing the modification had been delivered without condition and was then a binding contract, irrespective of the approval of stockholders? What further occurred you will remember and consider.]

143 (13.) [First. Had the officers who delivered the paper authority to deliver it, except on condition that it should be submitted to stockholders for approval? If they had such authority, then—

Second. Did they deliver it without such condition—that is, unconditionally, to take immediate effect without such approval?]

And thereupon the counsel for the said defendant did then and there except to the aforesaid charge and opinion of the said court; and, inasmuch as the said charge and opinion so excepted to do not appear upon the record, the said counsel for the said defendant did then and there tender this bill of exceptions to the opinion of the said court and requested the seal of the judge aforesaid should be put to the same according to the form of the statute in such case made and provided.

And thereupon the aforesaid judge, at the request of the said counsel for the defendant, did put his seal to this bill of exceptions pursuant to the aforesaid statute in such case made and provided, this seventeenth day of July, A. D. 1886.

[SEAL.] WM. BUTLER.

144 In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit. October Sess., 1885.

CENTRAL TRANSPORTATION COMPANY *vs.* PULLMAN'S PALACE CAR COMPANY. } No. 14.

Know all men by these presents that we, Pullman's Palace Car Company and George M. Pullman, are held and firmly bound unto

The Central Transportation Company in the full and just sum of two hundred and fifty thousand dollars, to be paid to the said The Central Transportation Company, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 30th day of June, A. D. 1886.

Whereas lately at a term of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a suit depending in said court between The Central Transportation Company and Pullman's Palace Car Company, a judgment was rendered against the said defendant, and the said defendant having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit
145 and a citation, directed to the said plaintiff, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next ensuing:

Now, the condition of the above obligation is such that if the said Pullman's Palace Car Company shall prosecute its writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

PULLMAN'S PALACE CAR COMPANY,
By GEO. M. PULLMAN, *President.*
GEO. M. PULLMAN.

Sealed and delivered in presence of—
Attest:
[SEAL.] A. S. WEINSHEIMER, *Sec'y.*

Surety approved.

WM. BUTLER, *Judge.*

[Endorsed:] No. 14. Oct. sess., 1885. Circuit court United States. Central Transportation Co. *vs.* Pullman's Palace Car Co. Bond surwrit of error. Filed 16 July, 1886.

146 UNITED STATES OF AMERICA, *Eastern District of Pennsylvania,* } *sct:*

I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original pleas and proceedings in the case of the Central Transportation Company *vs.* The Pullman's Palace Car Company, No. 14, October session, 1885, on file and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this 20th day of

September, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and eleventh.

[Seal U. S. Circuit Court, E. D. Pennsylvania.]

SAMUEL BELL,
Clerk of C. C.

Endorsed on cover: E. Pennsylvania C. C. U. S. No. 776. Pullman's Palace Car Company, plaintiff in error, *vs.* The Central Transportation Company. Filed October 16, 1886.

Supreme Court U. S.
FILED,
NOV 25 1889
JAMES H. McKENNEY
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1889.

PULLMAN'S PALACE CAR COMPANY,
Plaintiff in Error,
vs.
THE CENTRAL TRANSPORTATION COMPANY,
Defendant in Error.
No. 190.

THE CENTRAL TRANSPORTATION COMPANY,
Plaintiff in Error,
vs.
PULLMAN'S PALACE CAR COMPANY,
Defendant in Error.
No. 692.

MOTION OF PULLMAN'S PALACE CAR COMPANY

TO ADVANCE NUMBER 692 UNDER RULE 26 TO BE HEARD WITH NUMBER 190,

AND SUGGESTIONS IN SUPPORT OF THE MOTION.

BARNARD & GUNTHROP PRINT, CHICAGO.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1889.

PULLMAN'S PALACE CAR COMPANY, *Plaintiff in Error,* vs. THE CENTRAL TRANSPORTATION COMPANY, *Defendant in Error.*	**No. 190.**
THE CENTRAL TRANSPORTATION COMPANY, *Plaintiff in Error,* vs. PULLMAN'S PALACE CAR COMPANY, *Defendant in Error.*	**No. 692.**

MOTION.

Now comes Pullman's Palace Car Company, the plaintiff in error in the *first*, and the defendant in error in the *second* of the above entitled causes, and moves the court that said cause No. 692, may be advanced so as to be heard with the said cause No. 190, or that such assignment, convenient for the court, may be otherwise made, that both the cases may be before it at the same time. This motion is made under the eighth clause of the twenty-sixth rule of this court, which provides that "two or more cases, involving the same "question, may, by the leave of the court, be heard to-"gether."

The ground of the motion is that *one question only is*

at issue on the second record, and the *same* question, among others, is necessarily before the court, *in limine*, upon the record in the first case; that all the questions in both causes are at issue between the *same parties*, and between *them only;* that all arise out of the same alleged contract, a written instrument of lease, the suits being actions to enforce the rental covenants in said instrument; and that it is impossible for the court to hear and adjudicate upon one of said records separately without affecting the controversy between the parties in both the causes out of which these appellate proceedings have sprung.

The record in each case is printed, and both are submitted for the consideration of the court.

The single question at issue on the second record, No. 692, relates to the judgment below on the sixth plea. Of course no suggestion whatever is intended now upon the question itself. We propose only to indicate to the court what the question is, and to show that it is before the court on each record. The suit was for installments of rent under covenants contained in an alleged instrument of lease.

The "lease" upon which the actions are brought is shown on page 4 and on page 32 of the printed record in the second case, No. 692. By that the plaintiff in error, the Central Transportation Company, leases for ninety-nine years "all ' their cars, contracts and patent rights and personal prop- " erty," and the lease contains also (Rec., p. 6) the following covenants:

"6. That the parties hereto shall and will, at all proper times and manner exert their influence to obtain renewal or new contracts with said railroad companies, for and in respect to the use and employment of the cars of the second party, on and over their lines of railroad in carrying on their said business, and the first party shall and will not engage in the business of manufacturing, using, or hiring sleeping-cars while this contract remains in full force and effect."

Among the pleas filed by the defendant below is the following, the sixth plea:

"And for a further plea in this behalf the defendant, by its attorney, says that said indenture of lease was void in law as between the parties thereto, for the want of authority and corporate power on the part of the parties thereto to make and enter into said indenture of lease, and for that the same was in excess and in violation of the charters conferring the corporate powers on said plaintiff, and of the purpose of their incorporation. And this the defendant is ready to verify. Wherefore it prays judgment whether the plaintiff ought to have or maintain its aforesaid action against it."

Upon the argument of that plea, on objection to the lease when offered in evidence (Rec., p. 27), the alleged lease was held void, and the case comes to this court upon appeal from that judgment. The opinion of the court below is in the record, at page twenty-seven.

The same question is presented to this court upon the record in the other and earlier case, number 190. That suit was in the same court and before the same judges, for earlier installments of rent accruing under the same clauses of the same lease. It is true that no special plea directly raised below this question of the mutual obligation of the lease, and the cause was contested upon other grounds. But the *entire lease* was before the court, *a part of the declaration*, and is in the record at page seven.

While the question now referred to is before the court *singly* in the very next case between the parties upon this docket, we respectfully submit that it is *also of necessity* involved in the first record.

(1.) IT IS A QUESTION THE DEFENDANT MAY PROPERLY PRESENT HERE, THOUGH NOT RAISED BELOW:

"Arrests of judgment arise from intrinsic causes, appearing upon the face of the record. Of this kind are * * * *thirdly*, if the *case laid* in the declaration *is not sufficient in point of law to found an action upon.*"
3 Blk. Com., *393.

"There can be no doubt," said Marshall, C. J., in *Slacum* v. *Pomery*, 6 Cr., 221, "that anything *appearing upon the record*, which would have been fatal upon a motion in arrest of judgment, is equally fatal upon a writ of error."

"Had this error been moved in arrest of judgment, it is presumable the judgment would have been arrested; but it *is not too late* to allege, as error, in this court, a fault in the *declaration* which *ought to have prevented* the rendition of a judgment in the court below."

In *Dred Scott* v. *Sandford*, 19 How, 427, this court said:

"There can be no doubt as to the jurisdiction of this court to revise the judgment of a Circuit court, and to reverse it for *any error apparent on the record*, whether it be the error of giving judgment in a case over which it had no jurisdiction, *or any other material error;* and this, too, whether there is a plea in abatement or not.

* * * Writs of error to a state court, and to a Circuit court of the United States are regulated by different laws, and stand upon entirely different principles. And in a writ of error to a Circuit court of the United States, *the whole record* is before this court for examination and decision; and if the sum in controversy is large enough to give jurisdiction, *it is not only the right, but it is the judicial duty* of the court *to examine the whole case as presented by the record;* and if it appears upon its face *that any material error* or errors have been committed by the court below it is the duty of this court *to reverse the judgment*, and remand the case."

The objection to which questions are sometimes amenable, that they were not raised below, but for the first time and only on appeal, is confined to matters which by omission have

not been introduced into the record, and *so do not appear there*, or to such as may be assumed to have been *waived* by the parties in the court below. Instances are found in *Storm* v. *U. S.*, 94 U. S., 76; *U. S. Bank* v. *Smith*, 11 Wheat., 171; *Belk* v. *Meagher*, 104 U. S., 289. But things which do appear on the record, and which even express contract of parties could not exclude from consideration of the court, cannot be excluded by mere waiver; and from their own nature they must always remain a basis for any objection that, at any stage of the cause, may be founded upon them. It follows, that whenever the contract laid in a declaration is such that from it, *oritur non actio*, that fact is, of necessity, primary and sufficient reason for refusing, for arresting and for reversing a judgment. In *McAllister* v. *Kuhn*, 96 U. S., 89, this court said:

"Upon a writ of error to reverse a judgment *by default*, such defects in the declaration or complaint as could have been taken advantage of before judgment by general demurrer may be brought under review. If the judgment would have been arrested on motion, if made, *because the declaration* did not state facts *sufficient to constitute a cause of action* it may be reversed for the same reason upon error."

This rule is not confined to defect of jurisdiction, but it applies to every vice and infirmity in the cause of action laid in the declaration which renders it incapable to support the action. In *M'Hugh* v. *Cave*, 2 Brev. (S. C.), 37, judgment against a *feme covert* was arrested because the declaration did not show by what authority the contract on her part was made. In *Philson* v. *Administrator, &c.*, 1 Brev. (S. C.), 202, judgment against the administrator of a surviving partner was arrested because "it appeared upon the face of the "declaration that the plaintiff had no cause of action," judgment having previously been obtained against the surviving partner.

(2.) IT IS EQUALLY A QUESTION WHICH OUGHT TO BE PRESENTED AT THE EARLIEST STAGE OF THE CAUSE WHICH MAY OFFER AN OPPORTUNITY FOR IT.

In *Thomas* v. *The Railroad Company*, 101 U. S., 86, this court, speaking of the duty of the parties under the contract which was the cause of action in that case, said:

"It is a contract forbidden by public policy, and beyond the power of the defendants to make. Having entered into the agreement, it was the *duty* of the company to rescind or abandon it at the earliest moment. This duty was independent of the clause in the contract which gave them the right to do it."

This duty which existed between the parties is not eliminated in this forum, nor diminished because litigation has arisen. If the element which is objected to in the cause of action laid be such that the court ought not to give judgment on it, and would not, if it were advised of the objection, counsel ought not to let the court proceed, in ignorance of the objection, to enforce the contract. That this might happen is shown in these very cases, where the same judges below who in one suit entered judgment to enforce this contract when the nature of it was not unfolded to the court, in the very next suit upon the same contract, when its nature was disclosed, refused to enforce it, and rendered the opinion which is in the record before the court.

(3.) THE QUESTION IS ONE WHICH THE COURT ITSELF WILL RAISE AND ACT UPON *SUA SPONTE* WITHOUT WAITING FOR THE ACTION OF THE PARTIES.

If the objection that is raised to the contract which is the basis of the suit be valid, then it is one which is founded in the interest of the public, *i. e.*, of the State; and the court

will be vigilant, though the parties, from interest or negligence, be dormant.

In *Lewis* v. *Cox*, 23 Wall., 466, certain averments of fraud, etc., were introduced into a bill of complaint in order to make the case one of equitable cognizance which it would not have been without the matter involved in those averments. On appeal this court considered that the averments being disproved, the case was as if they had not been made, and, therefore, the bill did not furnish sufficient ground upon which to found a proceeding in equity. As stated in the syllabus, it was held that "the court will look at the proofs, "and if there be no proof at all of the matters which would "make a proper case for equity, it will disregard them and "look at the bill simply in its aspect of one to recover land, "of which the complainant is out of possession." And the court said: "In the present case the objection was not made "by demurrer, plea or answer, nor was it suggested by coun- "sel; nevertheless, if it clearly exists, it is the duty of the "court *sua sponte* to recognize it and give it effect."

Killian v. *Ebbinghaus*, 110 U. S., 574.

Garland v. *Davis*, 4 Howard, 131, was an action on the case to which, inadvertently or otherwise, had been filed a plea of *non assumpsit*, and issue and verdict followed the plea. No objection had been taken below or on appeal. But this court, discovering the error, of its own motion reversed the judgment, and the court said:

"In the examination of this case a defect has been discovered in the pleadings and verdict, which was not noticed in the court below, nor suggested by the counsel here.

"And the first question is, whether, under these circumstances, it can be considered by us; and if it can be, and is a material defect, not cured or otherwise capable of being overcome, whether it ought to be made a ground for reversing the judgment, and sending the case back for amendment and further proceedings.

"There can be no doubt, that exceptions to the opinions

given by courts below must all be taken at the time the opinions are pronounced.

"But it is equally clear that when the whole record is before the court above, as in this case, any exception appearing on it can be taken by counsel, which could have been taken below. *Roach* v. *Hulings*, 16 Pet., 319.

"So it is the duty of the court to give judgment on the whole record, and not merely on the points started by counsel. *Slacum* v. *Pomery*, 6 Cranch, 221; *Baird & Co.* v. *Mattox*, 1 Call. 257; 16 Pet., 319.

"In *United States* v. *Burnham*, 1 Mason, 62, the court alone took notice of the defect, which was the sole ground of its opinion."

In *Cragin* v. *Lovell*, 109 U. S., 194, a judgment had been rendered *on default*. It was considered in this court that the declaration set forth no cause of action, because, as stated in the syllabus, "upon a negotiable promissory note, made "by an agent in his own name, and not disclosing on its face "the name of the principal, *no action lies* against the princi- "pal." For that defect in the case laid in the declaration, the judgment on default was reversed, and this court said: "The judgment having been rendered on default, *upon a* "*declaration setting forth no cause of action*, may be reversed on "writ of error."

This court has said:

"It rests upon the plaintiff in error to establish our jurisdiction affirmatively before we can proceed" (*Troy* v. *Evans*, 97 U. S., 3); and "If, on looking into a record we find we have no jurisdiction, it is our duty to dismiss on our own motion, *without waiting the action of the parties* (*Hilton* v. *Dickinson*, 108 U. S., 168).

Certainly, then, if on looking into a record the court finds its agency invoked in enforcing and giving continuous effect to an executory contract which is unlawful, it will halt of its own motion upon that discovery. The court that refuses, *suo motu*, to exercise its powers at all till jurisdiction

appears, will equally refuse them to an illegal purpose, although jurisdiction may exist.

It cannot be said that such a question is not presented in the case. The legality of the judicial action invoked, the legality of a contract to be enforced, lies *for the court* at the threshold of every record. That question is inherently and necessarily before the court "*without waiting the action of* "*the parties.*"

The only question, therefore, presented on the record in number 692 is also among other questions before the court upon the record in number 190; and, as we have already stated, both cases are between the same parties and are founded upon the same cause of action.

EDWARD S. ISHAM,
Of Counsel for Pullman's Palace Car Company.

WAYNE MACVEAGH,
JOHN S. RUNNELLS,
Of Counsel.

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Supreme Court of the United States.

October Term, 1889.

Pullman's Palace Car Company,
Plaintiff in Error,
vs.
The Central Transportation Company,
Defendant in Error.
No. 190.

The Central Transportation Company,
Plaintiff in Error,
vs.
Pullman's Palace Car Company,
Defendant in Error.
No. 692.

Sur Motion to Advance No. 692 to be heard with No. 190.

BRIEF AGAINST MOTION.

FRANK P. PRICHARD,
JOHN G. JOHNSON,
For Central Transportation Company.

ALLEN, LANE & SCOTT, PRINTERS, PHILADELPHIA.

IN THE SUPREME COURT OF THE UNITED STATES.

Pullman's Palace Car Company vs. *Central Transportation Company.*	October Term, 1889. No. 190.

Central Transportation Company vs. *Pullman's Palace Car Company.*	October Term, 1889. No. 692.

Sur MOTION TO ADVANCE CASE 692 TO BE HEARD WITH CASE 190.

BRIEF AGAINST THE MOTION.

The motion is resisted because the two cases do not involve the same point.

Case No. 190 was an action of covenant to recover installments of rent due upon a lease made by the Central Transportation Company to the Pullman's Palace Car Company. (Printed on page 7 of the record of No. 190.) This lease, which was set out in full in the declaration, recited that both parties were manufacturing sleeping cars under certain patents

owned by them respectively, and were hiring the same to railroad companies; that the demands of the public required increased facilities for convenience, and the avoidance of repeated changes of cars over long routes; that it was proposed by the Central Transportation Company, having authority so to do by a special act of the legislature, to lease its cars, contracts and patent rights to the Pullman's Palace Car Company, who also had statutory authority to take the same. The lease then demised the said cars, contracts and patent rights for ninety-nine years, subject to certain conditions, among which was a stipulation by the Central Transportation Company, the lessor, that it would not, during the life of the contract, engage in the business of manufacturing, using or hiring sleeping cars.

The defendants pleaded "covenants performed," and also filed a special plea, which has apparently been omitted from the printed record in 190, although its character is sufficiently indicated by the replication to it printed on page 13. This plea set up that the terms of the lease had been modified by a written agreement subsequently made.

The case went to the jury upon the question of the execution and delivery of this subsequent agreement, and all the exceptions relate to rulings upon the admission or effect of the evidence given upon this point.

The fact alleged in the lease, that it was made by virtue of special statutory authority, was not denied, and no question was raised as to the validity of the original lease, if not avoided by the subsequent agreement.

Case No. 692 (in which the present motion is made to argue it with No. 190) was another action of covenant to recover subsequent installments of rent under the same lease. The declaration, as before, set out the lease. The defendant filed a number of special pleas, among which was one (printed on page 11 of the record in 692) that the lease was void for want of authority and corporate power in the parties to make it.

Upon the trial there was offered in evidence not only the lease, but also the special statute under which it was claimed

that authority had been given to execute it. The court, after argument, held that this statute did not confer the necessary authority, and that in the absence of such authority, the contract was against the policy of the law. In consequence of this ruling the court granted a nonsuit, and to the refusal to take off this nonsuit plaintiff took a writ of error.

From the foregoing statement two facts are apparent:—

First.—In case 190 no question as to the validity of the original lease was put in issue by the pleadings, or was raised by the evidence. Not even a suggestion of its invalidity appears in the whole record.

Second.—In case 692 the only question raised was as to the validity of the original lease, it being contended by defendant that it was without statutory authority, and was, in the absence of such authority, against the policy of the law.

In order now to take advantage of a point not legitimately raised by the record of 190, the plaintiff in error seeks by the present motion to consolidate it with 692. In order to do this it is forced to contend that, notwithstanding the defendant did not, in case 190, raise the question below, either by pleading or evidence, yet this court will now consider and decide it. The cases which are cited in support of this contention will be found to belong respectively to one or the other of two classes, viz.:—

First.—Where a judgment is entered by *default* and it appears by an inspection of the record that plaintiff had no legal right of recovery. In such case the defendant, as he does not appear, waives nothing.

Second.—Where it appears that the contract was, on the face of it, contrary to good morals, and where, therefore, the court, without regard to any implied or expressed waiver of the parties, will refuse to have anything to do with it.

As the judgment, in case 190, was not entered by defendant, but after a hotly-contested trial, it does not fall within the first class.

Does it fall within the second class?

It seems almost too clear for argument that the lease does not, on its face, show any illegality. There is nothing immoral in its terms. There is nothing in it which the legislature could not have authorized. It recites that such authority was given by a special statute. This was not denied by defendant in the pleading, nor was there any general plea putting it in issue, all the pleas being in confession and avoidance, and consequently no evidence, *pro* or *con*, was offered on this point. No motion in arrest of judgment could have been made, since, upon the face of the pleadings, there was a good cause of action. How, then, can this court reverse the judgment upon a point not appearing upon the face of the declaration, not raised by the pleadings, and not even incidentally mentioned by the parties in the whole progress of the cause. Even if it be conceded that the law is accurately stated in the brief in support of the motion, this case does not fall within it, since there is no illegality appearing on the face of the papers as set forth in the pleadings.

If the view of this case above submitted is correct, it is unnecessary to discuss the point, whether the question of the validity of a contract on the ground that it was against public policy can be raised for the first time after the cause reaches the appellate court.

Where a contract is immoral it may be that the court will at any stage refuse to allow the case to proceed. But a contract may be of such a nature that it would not be enforced by the courts, and yet a judgment confessed by one party to it for the amount due for benefits actually enjoyed by him, would not necessarily be invalid. In the present case, the defendant below entered into possession and used the leased property during the whole of the time for which rent was

claimed. Would a judgment confessed for the amount of this rent be invalid? If not, would not a judgment allowed by defendant to be entered without raising the question of invalidity be equally valid? The law was well stated by the Supreme Court of Pennsylvania in the case of

Gheen *vs.* Johnson, 90 Pa. St., 38–45,

as follows:—

"No authority is needed to show that courts of justice will "not lend their aid to enforce a contract such as that above "stated. Nevertheless, since the parties themselves have re- "fused to raise the question of the legality of this transac- "tion, I cannot see how we can convict the learned judge of "the court below of error, for not doing that which he had "no opportunity of doing. Had the defendants chosen to "confess judgment, I suppose the court could not have re- "fused to enter it, and so, if the defendants refused to avail "themselves of a defense which they might have had, the "court cannot be blamed for not forcing it upon them."

See also, to the same effect:—

Haarstick *vs.* Shields, 11 Mo. App., 602;
Monell *vs.* Goodenow, 65 Me., 178;
A. & N. R. Co. *vs.* Miller, 10 Neb., 601.

From whatever point of view this case is approached, it would seem a hardship to allow the question of the invalidity of the lease to be raised in case 190; and if it cannot be raised, then the case has nothing in common with case 692, and should be argued separately.

It may be added that, as far as the equities of the case go, they are all with the Central Transportation Company. The suit is for installments of rent due while the lease was in full operation and the lessee in possession enjoying the property. The defense is an attempt to escape the obligations of the lease after reaping its benefits.

FRANK P. PRICHARD,
JOHN G. JOHNSON,
For Central Transportation Company.